

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-6069

United States Court of Appeals

FOR THE SECOND CIRCUIT

MORAN TOWING & TRANSPORTATION Co., INC. and
TUG JUDY MORAN, her engines, tackle, etc.,

*Defendants and Third-Party
Plaintiffs-Appellants,*

—against—

UNITED STATES OF AMERICA,

Third-Party Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

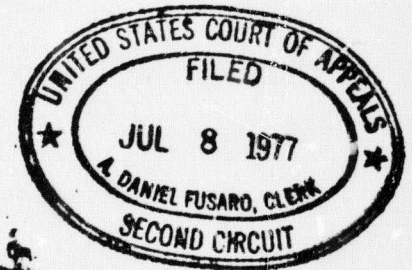
JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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TRANSCRIPT OF HEARING

Witnesses for Third-Party Plaintiff

Robert L. Maynard:

Direct	24a
Cross	72a
Redirect	132a, 145a
Recross	144a

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John Aitken:	
Direct	146a
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Witness for Third-Party Defendant

Thomas Sullivan:	
Direct	188a
Cross	212a
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CIVIL DOCKET
UNITED STATES DISTRICT COURT

Docket Entries
Jury demand date:
(In Admiralty)

JUDGE BURMAN

74 OR. 325

Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
BOUGHARD TRANSPORTATION CO., INC. AS OPERATORS AND B NO. 95 CORPORATION, AS OWNER OF THE BARGE B NO. 95,	For plaintiff: Grainger & Tesoriero 26 Bay, NYC-10004-747-1196
-against-	
MORAN TOWING & TRANSPORTATION CO., INC. and THE TIG LUDY MORAN, her engines, tackle, etc.,	Discontinued 7-12-76
Deft's & 3rd party plaintiffs	
UNITED STATES OF AMERICA	For defendant:
3rd party deff.	Burlingham Underwood & Lord (deft-3rd/p) 25 BATTERY PARK PLAZA, N.Y. 10004-22-7523
	U.S. Attorney Gilbert S. Fleischer Admiralty & Shipping 26 Federal Plaza, N.Y. 10007-264-0450.
	BURLINGHAM UNDERWOOD & LORD ONE BATTERY PARK PLAZA NEW YORK, NY.. 10004 change of address as of 10-09-76

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
to be mailed	Clerk	7/18/74	Uninc. 1	10	
		7/18/74	1635		10
to be mailed 7-25-77	Marshal				
Set of Action: Cargo Damages	Docket fee				
\$436,000.00	Witness fees				
Set above set	Depositions				
		1a			

74 CIV 325

Docket Entries

DATE	PROCEEDINGS	Date Ord Judgment
✓ Jan. 18-74	Filed complaint and issued summons.	
✓ Jan. 25-74	Filed summons with marshals return: Served: Moran Towing & Transp. Co. by M. Row on 1-22-74.	
Mar. 4-74	Filed stip & order that deft's time to answer complaint is ext. to, to 3-11-74. Bonsal, J.	
✓ Mar. 29-74	Filed Third-pty. complaint.	
✓ Mar. 29-74	Filed verification of service by mail of complaint upon Atty General, of the U.S. & U.S. Atty.	
✓ Mar. 29-74	Filed Claim of Judy Moran, Inc. as owner of the Tug Judy Moran.	
✓ Mar. 29-74	Filed ANSWER to complaint by deft's & 3rd.pty. plttf.	BU & I
✓ Apr. 10-74	Filed summons with marshals return: served: U.S. Atty c/o Dept of Justice by L. Bickowski on 4-5-74. Copy, sent to Atty General, Washington, D.C. by Certified mail Rec. No. 161402.	
✓ May 1/74	Filed defts' notice to take deposition of U.S.A. through the Officer of the U.S. Coast Guard, etc. on 5/16/74.	
✓ Jun. 5-74	Filed ANSWER & counterclaim to 3rd.pty. complaint	U.S.A.
✓ Jun. 14-74	Filed deft. & 3rd.pty. plttf's reply to counterclaim of U.S.A.	
✓ Aug. 12-74	Filed plttf's affidavit & notice of motion permitting filing of an amended complaint ret. 9-9-74	
Aug. 12-74	Filed plttf's memorandum of law in support of motion ret. 9-9-74.	
Aug. 23-74	Filed 3rd.pty. plttf's Affidavit by Jan. G. Schulmeisters in opposition to plttf's motion for leave to serve file an amended complaint to make claim directly against USA, for a 3rd.pty. defr.	
Aug. 23-74	Filed 3rd.pty. USA Memorandum of law in opposition to plttf's motion to file an amended complaint.	
✓ Oct. 2-74	Filed defts' & 3rd.pty. plttf's notice to take deposition of USA. Wright	
Oct. 2-74	PRE-TRIAL CONFERENCE HELD BEFORE BONSAI, J. ON 7-18-74.	
Nov. 29-74	Filed affidavit of J.G. Schulmeisters in opposition to plttf's motion. (Filed on 8-23-74).	?
Nov. 29-74	Filed Memo-endorsed on plttf's motion filed 8-12-74: Motion withdrawn by consent of plttf. So ordered. Bonsal, J.	?
Nov. 29-74	Filed 3rd.pty. deft's memorandum of law in opposition to plttf's motion. (Filed on 8-23-74) --- (See entry of 8-23-74)	
✓ Jan. 28-75	Filed deft & 3rd.pty. plttf's notice to take deposition of U.S.A.	36
✓ Jan. 28-75	Filed deft & 3rd.pty. plttf's notice to take deposition of U.S.A. through John O. Boyer.	7
✓ 0-06-75	Filed defts.' interrogs. to third party deft.	
✓ 12-05-75	Filed 3rd.pty. Deft. USA's Answers to interrogs.	
✓ 02-04-75	Filed deft. & 3rd.pty. plttf's supplemental interrogs.	
✓ 02-04-76	Filed deft. & 3rd.pty. plttf's request for production of documents.	
✓ 05-28-76	Filed consent & pre Trial Order. So ordered. Bonsal, J.	
✓ 07-12-76	Filed stip & order that the suit by Bouchard Transportation Co. against Moran Towing & Transportation Co. & Tug Judy Morgan is dismissed with prejudice, the 3rd.pty. claim against the third.pty. deft. to remain on the docket. Bonsal, J.	
✓ 07-21-76	Filed Defts & 3rd.pty. plttf's Moran Towing & Transportation Co. Inc. Notice to take deposition of USA thru Chief, Aide to Navigation Section, etc. Issued subpoenas.	
✓ 07-29-76	Filed deft. & 3rd.pty. plttf's request for production of documents.	
✓ 08-18-76	Filed 3rd.pty. deft's answers to supplemental interrogs of Moran Towing & Transportation.	
✓ 0-04-76	Filed pre-trial brief of U.S.A.	
✓ 0-05-76	Trial begun before Bonsal, J.	
✓ 10-06-76	Trial continued and concluded decision reserved Bonsal J.	

CONTINUED ON PAGE 3

325 BOUCHARD TRANSPORTATION -v- MORAN TOWING 74 CIV 320 BONSAL J.

Docket Entries

Date	Description	Disposed
1-19-76	Filed notice of change of address of BURLINGHAM UNDERWOOD AND LORD	
2-16-76	Filed transcript of record of proceeding taken on 10-5-86 1976.	
2-09-77	Filed Opinion # 45678 re: the Court finds for the 3rd party deft U.S.A. & an order may be entered dismissing the 3rd party cause of action. The foregoing constitutes the Courts findings of fact & conclusions of law FRCP 52(a) Settle Jdgmt On Notice. BONSAL J. m/n (164)	
3-25-77	Filed ORDER & JUDGMENT the 3rd party action of Moran Towing against the 3rd party deft U.S.A. is dsmd with prejudice & with costs to the U.S.A. to be taxed. BONSAL J. Jdgmt Entered 3/25/77 Clerk. mn/	
3-12-77	Filed Notice of Appeal by deft & third party pltrff Moran Towing to the U.S.C.A from the order of 3/23/77 & the jdgmt entered 3/25/77 . m/n	
5-19-77	Filed defendant and 3rd Party Plaintiff's Pre-Trial Memorandum.	
5-19-77	Filed defendant and 3rd Party Plaintiff's Memorandum of law.de	
5-19-77	Filed defendant and 3rd Party Plaintiff's Post Trial Brief.	
5-19-77	Filed Post Trial Brief of 3rd Party defendant U.S.A.	
5-19-77	Filed Designation of Exhibits of appellant Moran Towing & Transportation Co., Inc.	
5-19-77	Filed Designation of Exhibits of Appellee U.S.A.	
5-19-77	Filed stipulation re: temporary retention of record by district court pursuant to rule 11(c) FRAP	

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Complaint of Third-Party Plaintiff—Moran

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- X

BOUCHARD TRANSPORTATION CO., INC., as :
 operators, and B. NO. 95 CORPORATION
 as owners of the Barge B NO. 95, :

Plaintiffs, : 74 C.C. 325 DDB

-against- :

MORAN TOWING & TRANSPORTATION CO., INC. :
 and the Tug JUDY MORAN, her engines, :
 tackle, etc., : THIRD-PARTY COMPLAINT

Defendants and :
 Third-Party Plaintiffs, :

-and- :

UNITED STATES OF AMERICA, :

Third-Party Defendant. :
 ----- X

Third-Party plaintiffs Moran Towing & Transportation Co., Inc. and Judy Moran, Inc. for their third-party complaint against the United States of America by their attorneys Burlingham Underwood & Lord allege upon information and belief as follows:

FIRST: Plaintiffs Bouchard Transportation Co., Inc. and B. No. 95 Corporation, operator and owner, respectively, of the Barge B. NO. 95 have filed a complaint against defendant and third-party plaintiff Moran Towing & Transportation Co., Inc. and against the Tug JUDY MORAN

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Complaint of Third-Party Plaintiff—Moran

seeking recovery of \$436,000 for alleged damage to said Barge. A copy of said complaint is annexed hereto, *exhibits* [unclear]

SECOND: At all times hereinafter mentioned defendant and third-party plaintiff Moran Towing & Transportation Co. was and still is a corporation organized and existing under the laws of the State of New York, having an office and place of business at One World Trade Center, New York, New York, and was the operator of the JUDY MORAN.

THIRD: Third-party plaintiff Judy Moran, Inc. is a corporation duly organized and existing under the laws of the State of Delaware with an office and place of

business at Corporation Trust Company, 100 West 10 Street, Wilmington, Delaware, and has appeared herein as claimant of the Tug JUDY MORAN.

FOURTH: Third-party defendant United States of America is a sovereign which has waived immunity and has consented to be sued herein.

FIFTH: In the early hours of October 18, 1973, the Tug JUDY MORAN was proceeding northbound in the upper Hudson River with the Barge B. NO. 95 in tow. At about 0015 hours in the vicinity of Houghtaling Island, the Barge B. NO. 95 struck a submerged, unmarked and uncharted rocky pinnacle and was thereby damaged.

SIXTH: The aforesaid damage to the B. NO. 95 was not caused by any fault or negligence on the part of Tug

Complaint of Third-Party Plaintiff—Moran

JUDY MORAN or third-party plaintiffs, their agents or employees, but was wholly due to and solely caused by the fault and negligence of the third-party defendant United States of America, its agents and employees in the following respects, among others, which will be proven at trial:

1. It failed to maintain Buoy 35 on station.
2. It failed to show the position of the rocky obstruction on the U. S. Coast & Geodetic Survey Chart for the area.
3. It represented by means of the U. S. Coast & Geodetic Survey Chart of the area that the waters of the Hudson River in which the rocky obstruction was situated were part of the dredged channel.
4. Having knowledge of the rocky obstruction in the river, it failed to mark its position by appropriate aids to navigation.

SEVENTH: If third-party plaintiffs are under any liability to the plaintiffs Bouchard Transportation Co., Inc. and B. No. 95 Corporation by reason of the matters alleged in the complaint filed herein, which liability the third-party plaintiffs deny, then said third-party plaintiffs are entitled to be indemnified, including reasonable attorney fees, by the United States of America.

WHEREFORE, the third-party plaintiffs pray:

- (1) That the United States of America may be

Complaint of Third-Party Plaintiff—Moran

summoned to appear and answer all the matters aforesaid,

(2) That judgment may be entered against the United States of America for all sums that may be adjudged against the defendant and claimant in favor of plaintiff, together with reasonable attorney fees, and

(3) That third-party plaintiffs may have such other and further relief as may be just and proper.

Dated: New York, New York

March 29, 1974

BURLINGHAM UNDERWOOD & LORD
Attorneys for Third-Party
Plaintiffs

By Kenneth M. Will
A Member of the Firm
Office and P. O. Address:
25 Broadway
New York, New York 10004
Telephone: 422-7535

4. Denies each and every allegation contained in paragraph FOURTH, except that it admits that the United States of America is a sovereign and has consented to be sued under the terms and conditions of the Public Vessels Act, 46 U.S.C. 781-790, which incorporates by reference the

Answer of Third-Party Defendant—United States

Suits in Admiralty Act, 46 U.S.C. 741-752.

5. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph FIFTH.

6. Denies each and every allegation contained in paragraph SIXTH.

7. Denies each and every allegation contained in paragraph SEVENTH.

THE THIRD-PARTY DEFENDANT, UNITED STATES OF AMERICA, FOR ITS ANSWER TO THE COMPLAINT OF PLAINTIFF, BOUCHARD TRANSPORTATION CO., INC., AS OPERATORS, AND B. NO. 95 CORPORATION, AS OWNER OF THE BARGE B. NO. 95, SHOWS UPON INFORMATION AND BELIEF:

8. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph FIRST of the complaint.

9. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph SECOND of the complaint.

10. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph THIRD of the complaint.

11. Admits the allegations of paragraph FOURTH of the complaint.

12. Admits the allegations of paragraph FIFTH of the complaint.

13. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph SIXTH of the complaint.

14. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph SEVENTH of the complaint.

15. Admits that the grounding of the barge B. No. 95 was due to the negligence, carelessness and wrongdoing of the tug JUDY MORAN, her officers and crew; except as so

Answer of Third-Party Defendant—United States

admitted, denies knowledge or information sufficient to form a belief as to the other allegations of paragraph EIGHTH of the complaint.

16. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph NINTH of the complaint.

WITH RESPECT TO THE SECOND CAUSE OF ACTION ALLEGED IN THE COMPLAINT, THE THIRD PARTY DEFENDANT, UNITED STATES OF AMERICA, SHOWS UPON INFORMATION AND BELIEF:

17. Repeats each and every denial, admission, or denial of knowledge or information sufficient to form a belief set forth in paragraphs 8th through 16th herein.

18. Admits the allegations of paragraph TENTH of the complaint.

19. Denies knowledge or information sufficient to form a belief as to the allegations of paragraph ELEVENTH of the complaint.

20. Denies each and every allegation of paragraph TWELFTH of the complaint.

AS AND FOR A FIRST, SEPARATE AND COMPLETE DEFENSE TO THE THIRD-PARTY COMPLAINT, THE THIRD-PARTY DEFENDANT, UNITED STATES OF AMERICA, ALLEGES UPON INFORMATION AND BELIEF:

21. If the Barge B. NO. 95 was damaged while in tow of the tug JUDY MORAN, as alleged in the complaint and/or the third-party complaint, said damage was solely caused or contributed to by the negligence of those in charge of the tug JUDY MORAN or other persons for whom the third-party defendant is not responsible.

Answer of Third-Party Defendant--United States

AS AND FOR A COUNTERCLAIM AGAINST THIRD-PARTY PLAINTIFFS, MORAN TOWING & TRANSPORTATION CO., INC., THE TUG JUDY MORAN AND HER OWNER, JUDY MORAN, INC., THE THIRD-PARTY DEFENDANT, UNITED STATES OF AMERICA, ALLEGES UPON INFORMATION AND BELIEF:

22. Judy Moran, Inc., as owner of the tug JUDY MORAN, has intervened and filed a claim of owner in this litigation.

23. If the Barge B. NO. 95 stranded and sustained damage as alleged in the complaint, it was solely due to the negligence, carelessness and wrongdoing of the tug JUDY MORAN, her owner, operator, officers, crew, agent, employees or those in charge of her navigation, in that they failed to properly navigate the tug JUDY MORAN and negligently failed to use all available aids to navigation.

24. If the Barge B. NO. 95 stranded and sustained damage as alleged in the complaint, the persons in charge of the navigation of the tug JUDY MORAN negligently failed to use such reasonable skill and seamanship as would have avoided the grounding and the damage to the Barge B. NO. 95.

WHEREFORE, the United States of America, demands:

(a) that the complaint and the third-party complaint be dismissed with costs to it; (b) that, in the alternative, if any recovery is had by plaintiff against the United States of America, that the defendant and the third-party plaintiff indemnify the United States under its counterclaim for any amount it may be required to pay to the plaintiff; and (c) such other and further relief as the Court may deem just and proper.

Dated: New York, N.Y.

June 5, 1974.

PAUL J. CULHAN
United States Attorney
GILBERT S. FLEISCHER
Attorney in Charge
Admiralty & Shipping Section
U.S. Department of Justice
26 Federal Plaza, Suite 404
New York, N. Y. 10007
Attorneys for Third-Party
Defendant, U.S.A.
By: *[Signature]*
G. G. [illegible]

Opinion of Judge Bonsal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
:
BOUCHARD TRANSPORTATION CO., INC., as
Operators and B. No. 95 CORPORATION, :
as owner of the Barge B.No. 95, :
:
Plaintiffs, :
:
-against- : 74 Civ. 325
:
MORAN TOWING & TRANSPORTATION CO., INC.
and the Tug JUDY MORAN, her engines, : OPINION
tackle, etc., :
:
Defendants and
Third-Party Plaintiffs, :
:
-and- :
:
UNITED STATES OF AMERICA, :
:
Third-Party Defendant. :
:
- - - - - x

Appearances:

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One Battery Park Plaza, New York, N.Y. 10004
Attorneys for Moran Towing & Transportation Co., Inc.
KENNETH H. VOLK, ESQ.,
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United States Attorney for the
Southern District of New York
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Attorney in Charge, Admiralty & Shipping Section,
U.S. Department of Justice, 26 Federal Plaza, New York
Attorneys for United States of America
JANIS G. SCHULMEISTERS, ESQ.,
Trial Attorney

BONSAL, D. J.

This is an admiralty action tried to the Court arising out
of the grounding of an oil barge ("Barge B No. 95") which was being

Opinion of Judge Bonsal

push towed by the tug JUDY MORAN north up the Hudson River on the evening of October 17-18, 1973. The defendants and third-party plaintiffs, Moran Towing & Transportation Co., Inc. and the tug JUDY MORAN (hereinafter collectively referred to as "Moran"), settled with the plaintiffs in damages and have now brought this third-party action against the United States claiming that the grounding was occasioned by Buoy 35 being off station by some 50 feet and for other reasons hereinafter discussed.

According to the testimony at trial, the tug JUDY MORAN and Barge B No. 95 (hereinafter collectively referred to as "the flotilla") were proceeding north up the Hudson River in the vicinity of Buoy 35 which was located on the west side of the channel. The grounding occurred east of the channel and apparently was occasioned when Barge B No. 95 struck the remains of an old lighthouse. Shortly before the grounding, the flotilla passed a self-propelled tank barge, the MORANIA 300 (hereinafter "MORANIA"), which was proceeding south down river. The passing was made port to port at about the location of Buoy 35.

Factual Background

It is undisputed that Buoy 35 was off station some 50 feet east of the channel's westerly edge at the time of the grounding. Robert L. Maynard, captain of the JUDY MORAN, testified that on the evening of October 17-18, 1973 he was steering a course of 005° north between Buoy 30 and Buoy 35 with Houghtaling Dike Light, No. 36, dead ahead. He also testified that he changed the course left to

Opinion of Judge Bonsal

355° as he came abeam of Buoy 35 and steered for Light 40 on the east side of the channel and to the west of Houghtaling Island. Shortly thereafter, the grounding occurred some 900 feet south of Houghtaling Dike Light, No. 36.

Captain John Aitken of the Pilots Association of the Hudson River testified for third-party plaintiff Moran that Buoy 35 is often used as a guide in making a turn or change of course in the Hudson River and that the position of this Buoy is therefore important. Captain Aitken also testified as to the use of navigation charts and the function of the gyrocompass in maintaining a ship's course in the Hudson River.

The Government called Captain Thomas Sullivan, a Hudson River pilot, who testified that passing in the vicinity of Buoy 35 is not generally recommended because there is a bend in the River and the channel narrows at that point and that, in his opinion, a better area for passing would be in the straight-away off Stuyvesant Anchorage south of Buoy 35.

Numerous exhibits and the deposition testimony of several witnesses were also received into evidence at the conclusion of the trial.

Discussion

Moran contends that the Government is liable for damages caused by the grounding because (1) the Coast Guard failed to maintain Buoy 35 on station properly; (2) the Coast Guard failed to mark the position of the hazardous underwater obstruction, the

Opinion of Judge Bonsal

so-called "rock pinnacle", with a buoy or other warning signal; (3) the Marine Chart Division of the Department of Commerce neglected to insert proper notations for this hazard on the only chart available for the area; (4) the Chart Division failed to produce a chart with a scale large enough to permit the navigator to obtain an accurate determination of his position in the channel; and (5) the Coast Guard failed to maintain a range on Roach 23, the area of the grounding, so as to enable navigators visually to confirm their position on the Hudson River.

At the trial, Captain Maynard testified that before passing the MORANIA the flotilla was proceeding on a straight course of 355°, within a degree, heading for Light 40 on Houghtaling Island with Light 32 under its stern. (Transcript at 66-67; 76-77) (hereinafter "Tr."). In addition, Maynard testified that his searchlight was on the black can buoy on the port bow which was Buoy 39 off Matthews Point. (Tr. at 79). Maynard also testified that he did not change courses between the time of the passing of the MORANIA and the grounding of Barge B No. 95. (Tr. at 79-80).

From the evidence produced at trial, it appears that the flotilla had already passed Buoy 35 at the time of the grounding, and that Captain Maynard was no longer navigating with any reference to Buoy 35. Surveys were made of the channel following the grounding, but no obstructions were found. (See Deposition Testimony of Herbert S. Wright, dated January 23, 1975, Exhibit 23 at 15-17; Deposition Testimony of Raymond F. Weidman, dated May 13, 1975, Exhibit 28 at 55-56). Surveys were then made immediately

Opinion of Judge Bonsal

outside and to the east of the channel line which revealed a sounding of some 17 feet in the area of the grounding near the remains of the old Bug Island Light. See Exhibit 24, position "C".

The plaintiff has the burden of proving that the alleged "fault" of the defendant was the cause of the grounding and not merely a condition. See The Socony No. 19, 29 F.2d 20, 22 (2d Cir. 1928); The Perseverance, 63 F.2d 788 (2d Cir. 1933); The Syosset, 71 F.2d 666 (2d Cir. 1934); Matton Oil Transfer Corp. v. The Greene, 129 F.2d 610 (2d Cir. 1942); see also Gilmore & Black, The Law of Admiralty 494 (2d ed. 1975).

Here, Captain Maynard testified that he was navigating in the channel at all times. In addition, the captain of the MORANIA, Bjorn Roal Eliassen, testified that the flotilla appeared to be in good position. (See Deposition Testimony of Bjorn Roal Eliassen, dated May 1, 1974, Exhibit 9 at 10-11). Nevertheless, the channel was found to be clear following the grounding, and the only low spots appeared to be some 100 feet outside the channel's easterly line and above the station of Buoy 35 which is where the grounding occurred.

While the Government, through the Coast Guard, is responsible for the location and maintenance of buoys; and navigators, absent some suspicious circumstance or notice, are entitled to rely upon the representations made in the Government charts relative to the location of the buoys, see The Cleveland, 83 F.2d 947, 949 (2d Cir. 1936), Trinidad Corp. v. S.S. Sister Katingo, 280 F.Supp. 976, 977 (S.D.N.Y. 1967), it appears that in order to

Opinion of Judge Bonsal

establish a prima facie case, the plaintiff must prove that the negligence or failure of the Government to maintain the charted position of the buoy was the proximate cause of the grounding. Afran Transport Co. v. United States, 435 F.2d 213, 219 (2d Cir. 1970), cert. denied, 404 U.S. 872 (1971).

Here there was evidence that prior to the grounding Captain Maynard was taking a bearing on fixed Light 40 on Houghtaling Island with fixed Light 32 under his stern. Under these circumstances, it would appear that Captain Maynard's use of Buoy 35 was minimal or, at best, was used merely to alter his course towards Light 40. In addition, there was testimony that Buoy 35 was out of the sight of Captain Maynard during the port-to-port passing with the MORANIA so that the buoy was of no assistance in navigating at that time.

Captain Maynard was a licensed pilot but he was not a licensed Hudson River pilot. Captain Maynard testified that he had navigated the Hudson River hundreds of times since 1936 and that he was familiar with its passages, including the area of the grounding. However, according to the testimony of Captain Sullivan, the Hudson River channel narrows south of Buoy 35 because of a bend in the River and is therefore a poor place for ships to pass.

There also appears to be some inconsistencies between Captain Maynard's testimony on the course of the flotilla and his statement that he was in the channel at all times. According to his testimony at trial, the flotilla was on a course of 005° as it passed within 150 - 200 feet of Buoy 34 before reaching Buoy 35

Opinion of Judge Bonsal

and that it remained on this course until it passed the MORANIA at the station of Buoy 35. However, according to the evidence produced at trial, such a course would place the flotilla outside and east of the channel and into the area of the "rock pinnacle" as it came abeam of Buoy 35. See Exhibit 27; Annex B attached to Defendant's post trial brief.

Since the grounding of the flotilla was occasioned by the remains of an old lighthouse located some 100 feet outside of the easterly edge of the channel, the station of Buoy 35 does not appear to have been the proximate cause or even a contributing cause of the grounding. See the Socony No. 19, supra; The Perseverance, supra; Matton Oil Transfer Corp. v. The Greene, supra.

Captain Maynard testified that he had navigated the Hudson River hundreds of times without a large scale chart. Therefore, it does not appear that the Government's failure to provide a larger scale chart of the area or its failure to mark the so-called "rock pinnacle" where the grounding occurred contributed to the grounding. The Government is not obliged to undertake to mark all potential hazards in navigation but only to use due care. See Indian Towing Co. v. United States, 350 U.S. 61, 69 (1955).

Moreover, the mere fact that Government places a warning buoy over a hazard after a casualty has occurred is not evidence of negligence or of a pre-existing duty to warn. Consequently, Moran's offer of proof of the establishment of Buoy 34A at the site of the grounding as evidence of a pre-existing duty to warn will not be received. Fed. Rules Evid. 407, 28 U.S.C.A.

Opinion of Judge Bonsal

see Indian Towing Co. v. United States, supra at 69.

Since Moran has failed to show that Buoy 35's being off station was the proximate cause or the contributing cause of the grounding of Barge B No. 95, the Court finds for the third-party defendant United States and an order may be settled dismissing the third-party cause of action.

The foregoing constitutes the Court's findings of fact and conclusions of law. Fed. R. Civ. P. 52(a).

Settle Judgment on Notice.

Dated: New York, N.Y.
March 9, 1977

DUDLEY B. BONSALE

U. S. D. J.

Final Order and Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BOUCHARD TRANSPORTATION CO., INC., as :
operator and B. No. 95 CORPORATION, as :
owners of the barge B No. 95, :

Plaintiff, :

7th Civ. 325
(DBB)

-against-

MORAN TOWING & TRANSPORTATION CO., INC. :
and the Tug JUDY MORAN, her engines, :
tackle, etc., :

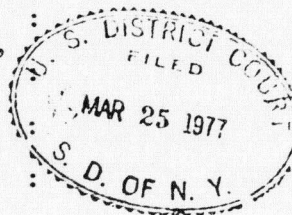
ORDER
and
JUDGMENT

Defendants and :
Third-Party Plaintiffs, :

-and-

UNITED STATES OF AMERICA,

Third-Party Defendant.



-----X
WHEREAS the action by the plaintiffs, Bouchard Transportation Co., Inc., as operators, and B No. 95 Corporation, as owners of the barge B No. 95, against Moran Towing & Transportation Co., Inc. and the tug JUDY MORAN, her engines, tackle, etc., defendants and third-party plaintiffs, was dismissed with prejudice, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, by a stipulation and order filed on the 12th day of July 1976, with the third-party claim against the third-party defendant, United States of America, remaining on the docket, and

WHEREAS the third-party action came on to be heard by this Court before the Honorable Dudley B. Bonsal, United States District Judge, at the trial held on the 5th and 6th day of October 1976, wherein the third-party plaintiffs, Moran Towing & Transportation Co., Inc. and the tug JUDY MORAN were represented by Messrs. Burlington Underwood & Lord by Kenneth H. Volk, Esq. and Nicholas H. Cobbe, Esq., and wherein the third-party defendant, United States of America, was represented by Robert B. Fiske, Jr., Esq., United States Attorney, for the Southern District of New

Final Order and Judgment

York, Gilbert J. Fleischer, Esq., Attorney in Charge,
Admiralty & Shipping Section, United States Department of
Justice, by Janis G. Schulmeisters, Esq., and

WHEREAS the Court, having heard evidence in open Court,
and other evidence having been submitted by deposition
testimony and exhibits, after a review of all the evidence
and briefs submitted by counsel and after due deliberation
having rendered its decision by a written opinion, No. 45678,
dated and filed on March 9, 1977, finding for the third-
party defendant United States, and directing that the
third-party cause of action against the United States be
dismissed, it is

ORDERED AND ADJUDGED that the third-party action of
Moran Towing & Transportation Co., Inc. and the tug JUDY
MORAN against the third-party defendant, United States of
America, be and the same hereby is dismissed with prejudice,
with costs to the United States of America. *to be typed.*

Dated: New York, New York

March 9, 1977.

[Signature]
United States District Judge

BEST COPY AVAILABLE

Notice of Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
BOUCHARD TRANSPORTATION CO., INC., :
as operators and B NO. 95 CORPORATION, :
as owners of the Barge B NO. 95, :
Plaintiffs, : 74 Civ. 325 (DBB)
- against - : NOTICE OF APPEAL
MORAN TOWING & TRANSPORTATION CO., :
INC. and TUG JUDY MORAN, her engines, :
tackle, etc., :
Defendants and :
Third-Party Plaintiffs, :
- and - :
UNITED STATES OF AMERICA, :
Third-Party Defendant. :
----- X

PLEASE TAKE NOTICE that Moran Towing & Transportation Co., Inc., defendant and third-party plaintiff in this action, hereby appeals to the United States Court of Appeals for the Second Circuit from the Order of Judge Dudley B. Bon-sal, dated March 23, 1977 dismissing the third-party action of Moran against the third-party defendant, United States of America, with prejudice, and from the judgment entered pursuant to that Order on March 25, 1977.

Dated: New York, New York

April 21, 1977

BURLINGHAM UNDERWOOD & LORD
Attorneys for Defendant and
Third-Party Plaintiff Moran
Towing & Transportation Co.,
Inc.

By

Kenneth M. Hall
A Member of One Firm

One Battery Park Plaza
New York, N.Y. 10004
422-7585

Notice of Appeal

T O : THE CLERK OF THE COURT

UNITED STATES DEPARTMENT OF JUSTICE
ADMIRALTY AND SHIPPING SECTION
26 FEDERAL PLAZA
NEW YORK, N.Y. 10007

mbrf

Excerpts From Trial Transcript

3

MR. SCHULMEISTERS: Fine with me.

MR. VOLK: Captain Maynard, please.

ROBERT L. MAYNARD, called as
a witness by the plaintiff, being first duly sworn,
testified as follows:

DIRECT EXAMINATION

BY MR. VOLK:

Q Captain Maynard, by whom are you employed?

A Moran Towing & Transportation Co., One World
Trade Center, New York City.

Q What is your position with Moran?

A Master of their tugs.

Q How long have you been employed by Moran?

A As of now, approximately ten years.

Q How long have you been going to sea?

A Since 1934.

Q How old are you?

A 58.

Q Do you hold any license issued by the United
States Government?

A Yes, I have a master unlimited ocean with
various first class pilot endorsements.

Q Have you sailed on deep sea ships?

A Yes, I have.

mbrf

Maynard-direct

4

Q Would you tell us when and where?

A I sailed on various McCormack -- Moore-McCormack ships, U.S. Line ships, Grace Line ships, rising from sailor to master.

Q You have sailed as Master?

A Yes, I have.

Q On deep sea vessels?

A Yes, I have.

Q What did you do during the war?

A I was in the Merchant Marine and Naval Reserve and rose to the rank of lieutenant obtaining command serving in capacity as navigator, first lieutenant, executive officer, and commanding officer.

Q What kind of vessels were you sailing on?

A This was a United States Naval vessel, the USS Steel.

Q You say you have been going to sea since 1934?

A '34, sir.

Q During that period of time have you had occasion to sail up and down the Hudson River?

A Yes, I have.

Q When did you first have occasion to sail up the Hudson River?

A I believe my first voyage was in 1936.

mbrf

Maynard-direct

5

That was as a seaman.

Q Between that time and October '73, would you give an estimate of how many times you have sailed up and down the Hudson River to Albany?

A I would say in the neighborhood of several hundred. I have not the exact figure.

Q How long have you held your master's license?

A Since 1945.

Q Did that master's license authorize you to sail up the Hudson River in October 1973 as master of the Judy?

A Yes, it does. It also qualified me as a master due to the fact that she is below 1000 tons.

Q Now on October 18th what was your duty with Moran?

THE COURT: October 18th?

Q 1973, I'm sorry.

October 17th and 18, 1973.

THE COURT: All right.

A I was the master of the Judy Moran.

Q Can you describe the Judy Moran, please?

A She is a twin screw diesel tug approximately 3200 horsepower, twin rudders, constructed in 1962, pilot house control, the latest navigation equipment aboard

mbrf

Maynard-direct

6

there commensurate with the job she had to do.

Q Did she have a gyro compass?

A Yes, she did.

Q Radar?

A Yes.

Q Searchlight?

A Yes, she did.

Q Was she equipped with necessary navigation charts for sailing up the Hudson River?

A Yes, she was.

Q On October 17-18, what was the Judy engaged in doing?

A We were engaged in towing the tank barge B#95, B for Bouchard 95 from ~~Hallsboro~~ ^{PAULSBORO}, New Jersey to Albany, New York.

Q Can you describe the Bouchard B#95?

A She is a large tank barge of approximately 100,000 bore capacity, approximately 340 feet long by 70 feet wide. Those are approximate figures.

Q Now on this occasion, October 17th and 18th, 1973, you said you were on a voyage from ~~Hallsboro~~ ^{PAULSBORO} to where?

A Albany, New York, Socony, Albany, New York.

Q Would that take you up the Hudson River?

mbrf

Maynard-direct

7

1

2

A Yes, it would.

3

Q Was the barge loaded or lightered at that time?

4

A She was loaded but not fully loaded. That is, she

5

had capacity for more load but the order apparently was

6

just for whatever she had in. She was drawing 21 foot six

7

inches.

8

Q Did she have a crew on board her?

9

A Yes, she had a crew of two.

10

Q Now, as you were proceeding up the Hudson River --

11

THE COURT: Let me get this straight. Who had

12

the crew of two, the barge?

13

THE WITNESS: The barge.

14

THE COURT: The barge did.

15

Q And the tug, of course, she had how many in

16

her crew?

17

A At that particular voyage we had myself, the

18

mate, two deck hands, a cook and an engineer, six men.

19

Q Will you describe to the Court how you made fast

20

to the B#95 in proceeding with this tug?

21

A Commonly known as in push gear, that is with the

22

bow up against the notch in the stern of the tug, two

23

wires hooked to our towing machine aft to take up the

24

slack and hold them tight, with two safety nylon lines on

25

the bow in case one of them parts to be able to control

1 mbrf

Maynard-direct

8

2 the tow.

3 Q So the barge was ahead of the tug, is that correct?

4 A That is correct.

5 Q On the night of October 17-18, 1973 what watch
6 were you standing?

7 A I normally stand the 6:00 to 12:00 watch, that
8 is from 6:00 in the morning to noon and from 6:00 at
9 night to midnight.

10 Q Now, at midnight on that day between October
11 17th and October 18, 1973, where was the flotilla,
12 approximately?

13 A Well, we were in the neighborhood of the
14 Stuyvesant Reach. The exact moment I can't tell you
15 exactly.

16 THE COURT: What time of the day was this
17 again?

18 THE WITNESS: At midnight.

19 THE COURT: Midnight you are talking about?

20 THE WITNESS: Yes, sir.

21 Q Did the Judy maintain a log aboard the vessel
22 at that time?

23 A Yes, what is known as a logbook in Moran's,
24 yes. We have a record book that corresponds to the daily
25 report sheets we file with the office, and these same

mbrf

Maynard-direct

9

entries are made in the logbook as we reflect in our
towing sheet we send in.

THE COURT: Did this push tow continue from the
time you left ~~Hallshero~~ ^{Paulboro}?

THE WITNESS: No, sir.

THE COURT: When did you start the push tow?

THE WITNESS: I picked the two up, I believe, in
the vicinity of Verrazano Bridge.

THE COURT: Verrazano Bridge?

THE WITNESS: Yes, sir, below the Verrazano
Bridge.

THE COURT: Below the bridge and then was it the
same procedure from then on up to where, you say,
Stuyvesant Reach, it was pushing tow all the way?

THE WITNESS: Yes, sir, it was push tow.

THE COURT: Push tow all the way.

THE WITNESS: Yes, sir.

Q I show you a book which has been premarked Moran
Exhibit 1 for identification. Can you identify that?

A Yes, that is the logbook, maintained at the
time of the accident.

Q Does that cover the date October 17-18, 1973?

A Yes, it does.

MR. VOLK: I would like to offer it in evidence.

THE COURT: Any objection?

MR. SCHULMEISTERS: I don't think so.

MR. WOLK: Your Honor, we have premarked all
of our exhibits up to 35.

THE COURT: Thank you.

MR. SCHULMEISTER: No objection.

(Moran Exhibit 1 received in
evidence.)

Q I show you another document. I mentioned
something about a daily report. Is this the daily report
for the Judy for that day?

A Yes, it is.

Q For October 18th?

A Yes, it is.

MR. WOLK: I offer it in evidence, Exhibit 2.

MR. SCHULMEISTERS: No objection.

THE COURT: No objection to Exhibit 2?

MR. SCHULMEISTERS: No objection, your Honor.

THE COURT: All right.

(Moran Exhibit 2 received in
evidence.)

Q You may if you require, Captain, refer to any
document necessary to refresh your recollection.

A Thank you.

1 mbrf

2 Q You say you were in the vicinity of Stuyvesant at
3 midnight?

4 A That is correct, sir.

5 Q What was the weather like at that time?

6 A It was a clear dark night, negligible wind.

7 To the best of my recollection there was no wind that would
8 bother me or bother anything, that I would consider a
9 hazard to anybody.

10 THE COURT: How about the tide?

11 THE WITNESS: The tide was ebbing, sir.

12 THE COURT: Tide was ebbing?

13 THE WITNESS: Yes, sir.

14 Q At what speed were you proceeding at this time
15 as you described?

16 A Approximately six and a half knots over the
17 ground.

18 Q Now at midnight who was with you in the wheelhouse
19 of the Judy Moran?

20 A At midnight the mate, Mr. Ferguson, was supposed
21 to relieve me, but due to the fact that he was not
22 acquainted at all with this area I decided to stay
23 all the way up to Albany with him. / I believe he was licensed
24 as far as the requirement for 1000 tons or less was
25 required. I also had the deck hand --

1 A No, sir.

2 Q What was his experience? Do you know that?

3 A He had retired as a warrant officer of the
4 United States Army; again this is hearsay, your Honor.

5 MR. SCHULMEISTERS: Same objection.

6 THE COURT: Yes, I think that's right. I will
7 sustain the objection to that. How long had he been
8 on your crew?

9 THE WITNESS: I would say approximately three
10 to four months.

11 THE COURT: On this vessel?

12 THE WITNESS: On this vessel.

13 THE COURT: On previous voyages to Albany?

14 THE WITNESS: Yes, sir.

15 THE COURT: He had been on prior voyages
16 to Albany?

17 THE WITNESS: Yes, sir.

18 Q Do you know where Mr. Ferguson is now?

19 A To the best of my knowledge I have been advised
20 he is in the Panama Canal employed by the Government.

21 MR. SCHULMEISTERS: News to me, your Honor.

22 THE COURT: That is all right. I will allow that.
23 That is the best of his knowledge.

24 Q Was anybody else in the wheelhouse with you?

1 mbrf

2 A Yes, the deck hand Thorzvik.

3 THE COURT: Is it your testimony then at this
4 point that you, Ferguson and Thorzvik were all in the
5 deckhouse?

6 THE WITNESS: Yes, in the pilot house.

7 THE COURT: Pilot house?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right.

10 Q Was the radar in operation at this time?

11 A Yes, it was. Mr. Ferguson was studying the river
12 and watching the radar.

13 Q Was it functioning properly?

14 A Yes, it was.

15 Q Did you have a radio-telephone set aboard the
16 Judy at this time?

17 A Yes, we did.

18 Q Was it functioning properly?

19 A Yes. If you are referring to the VHF, we had
20 two types in there. We had a VHP and we had an AM set.

21 Q Did you have a chart aboard the Judy at that
22 time?

23 A Yes, I did. I had the latest charts aboard,
24 yes, sir.

25 Q I show you a chart and ask you if you can identify
this chart and tell us whether it was the chart that you

1 had aboard the vessel at the time.

2 A Yes, this is the chart that was in use.

3 THE COURT: Was that the chart that you had on
4 this voyage?
5

6 THE WITNESS: Yes, sir.

7 MR. ~~WOLK~~: I offer it in evidence.

8 MR. SCHULMEISTERS: May I see it.

9 THE COURT: Any objection to Exhibit 3?

10 MR. SCHULMEISTERS: May I have just one second?

11 THE COURT: Surely.

12 MR. SCHULMEISTERS: No objection, your Honor.

13 MR. ~~WOLK~~: I offer it in evidence.

14 (Moran Exhibit 3 received in
15 evidence.)

16 THE COURT: I take it you have given me just
17 the pertinent part?

18 MR. ~~WOLK~~: Yes, just the pertinent part where
19 this casualty occurred.

20 THE COURT: I take it it is the same scale as
21 the chart.

22 MR. ~~WOLK~~: It is a Xerox copy, your Honor.

23 THE COURT: All right.

24 Q Where was the chart located at this time?

25 A It was on the chart room on the after end

1 mbrf
2 of the wheelhouse where it could be utilized, a chart
3 table.

4 Q I didn't hear the last few words.

5 A The chart table is located in the after end of
6 the wheelhouse where you turned around from the radar to
7 work at the chart table. It was on the chart table.

8 Q Available for use?

9 A Yes.

10 Q You say after midnight you continued in charge
11 of the navigation of the vessel?

12 A That is correct, sir.

13 Q Did you at some point in time become aware of
14 any other traffic in the river?

15 A Yes, at the time I was in the vicinity of Old
16 Maid's Light, which is on the lower end of the Stuyvesant
17 Reach, I made a security call informing vessels I was
18 northbound with deep loaded barge and requesting any south-
19 bound traffic to acknowledge.

20 Q Was this over voice radio?

21 A VHF radio, yes, sir.

22 Q Did you receive any response to that security call?

23 A I did. I received an answer from the Morania
24 300 who said he was southbound in light condition in the
25 vicinity of Coeymans.

1 mbrf
2 Q Are you familiar with the Morania 300 or were
3 you when you received this response familiar with the Morania
4 300?

5 A Yes, I am. I have been in the vicinity of her
6 several times. I have never served on her myself. I
7 am not familiar with her --

8 THE COURT: What is the Morania?

9 THE WITNESS: It is a rather outlandish sort
10 of a craft. It is a sort of a barge square ended with a
11 pilot house well forward, and I don't know what they call
12 these things. The propulsion system is like two outboard
13 motors on the stern end of her. And I believe they use
14 them for rudders as well as propulsion. I believe they
15 have some kind of control on them. I am not familiar
16 with them.

17 THE COURT: It is a barge and it has power?

18 THE WITNESS: Yes, self-propelled barge, yes, sir.

19 THE COURT: Self-propelled barge.

20 Q Will you describe what happened after that?
21 Did there come a time when you visually sighted the Morania
22 300?

23 A Yes, I think about the time I was approaching
24 the Upper Bronk Light I could see across that point of
25 land Matthews Point and the lower point there, I don't

mbrf

Maynard-direct

18

remember the name of it, and then he came into view on that New Baltimore **Range**. That is where I estimated him to be, on the upper end of the New Baltimore **Range**.

Q Did you thereafter have any further communication with respect to passing?

A Yes, we did, we exchanged that we would pass on one whistle.

Q What does that mean, exactly?

A Pass port to port, I on the starboard side, he on his starboard side, starboard hand of the channel, that is, port to port passing.

THE COURT: You are going awfully fast. I am not a navigator. This is a port to port?

THE WITNESS: Yes, sir.

Q Will you describe what happened after that?

THE COURT: Tell me about these whistles.

THE WITNESS: We did not exchange whistles. We indicated by VHF and I believe he initiated one flash of his searchlight, which I answered with one flash of mine which is the practice of the harbor.

THE COURT: So you did it by light?

THE WITNESS: Yes, sir, and by voice, yes, sir. It was completely understood that it was a one whistle passing.

1 mbrf
2 Q Will you describe what happened after you had
3 agreed to this port to port passing?

4 A Well, about that time I -- at the time I come
5 abeam of Buoy 30, I changed my course for Houghtaling
6 Light taking into consideration that he was --

7 THE COURT: Talk a little slower.

8 THE WITNESS: I'm so sir.

9 THE COURT: I want what you did.

10 All right. Start again.

11 A On my approach to Buoy 30, I have a course
12 change there, and I steer for the Houghtaling Dike
13 Light. That is in the lower end of Houghtaling Island.
14 That should bring me in a close proximity of Buoy 35.

15 THE COURT: In which direction?

16 THE WITNESS: I was on a northeast heading --
17 not northeast, that heading would be --

18 THE COURT: That would be Buoy 35 on what, star-
19 board or port?

20 THE WITNESS: On the port. That Buoy 35 would
21 be on my port, sir, and it would be on his starboard side
22 coming down. I noted that we were going to pass in
23 a close proximity of that buoy.

24 Q Which buoy is that?

25 A Buoy 35, sir.

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Q Does that buoy have a light?

A Yes, it does.

Q Will you describe it?

A It is a green flashing light on a black structured buoy.

Q You say your first alteration was at Buoy ~~35~~³⁶?

A Yes, sir.

Q That would be on your port or starboard side?

A That would be on the starboard side. That is on the upper end of the Stuyvesant Anchorage.

Q When you refer to Houghtaling Light, is that the one at the end of the dike?

A Houghtaling Dike Light. That is Stonehouse Dike Light.

Q Is that No. 36?

A Yes, it is, sir.

Q Will you describe what happened after that?

A As he was coming down, I could see that I -- I could see his green light --

THE COURT: I am wondering whether it would be helpful to me, I think if the captain could mark -- has he got a copy of this chart?

MR. ~~WOLK~~[✓]: I have a fresh chart I could have him mark on, your Honor.

1 THE COURT: I would like him to mark, he mentioned
2 Buoy 30 and Buoy 35 and I would like him to mark those.
3 You want to come up and look?
4

5 MR. SCHULMEISTERS: Yes. May I see the chart
6 for a minute?

7 Q Will you draw an arrow to the Stuyvesant Light
8 that you described as No. 30?

9 A Yes.

10 Q Where you began to turn?

11 A I think I could put that on there to simplify it.
12 I am not a good talker, sir. If I might have a straight
13 edge or something --

14 MR. SCHULMEISTERS: Your Honor, I think maybe
15 the question ought to be read back. I think he said
16 Light 30. There is no Light 30. It is Buoy 30.

17 THE WITNESS: Buoy 30.

18 THE COURT: Buoy 30, all right.

19 A This is the course I steered.

20 Q Just a minute. We asked you to mark Buoy 30.

21 A Yes, all right.

22 (Witness marked the chart.)

23 Q Now draw an arrow to what is designated as Buoy
24 30 and put the number 1 next to it.

25 (Chart marked.)

1 mbrf
2 O Now you mentioned a Buoy 35. Can you just put
3 a circle around that buoy so that the Court will know
4 which it is?

5 (Witness marked chart.)

6 O (Continuing) All right, I will draw an arrow
7 to that and mark that No. 2.

8 Now you also mentioned a dike light or --

9 A That is here, 36.

10 O 36? Will you draw a circle around that?

11 A Yes, sir.

12 (Witness marked chart.)

13 O I will draw an arrow to that and mark that No. 3.

14 MR. ~~WOLK~~: Your Honor, this might help you under-
15 stand that.

16 (Chart handed to the Court.)

17 MR. ~~WOLK~~: The witness has drawn some lines in
18 there indicating a course --

19 THE WITNESS: A projected course.

20 MR. ~~WOLK~~: Projected course as he passed Buoy
21 30.

22 THE ~~W~~ITNESS: And what I used to navigate to keep
23 the vessel on what I considered the main part of the channel.

24 THE COURT: All right, so you passed 30 and you
25 were intending to pass 35 on the port side, and then

1 you were arranging for this next one here which is what,
2 what is that third one, No. 3?

3 THE WITNESS: No, this is a dike I steer on.
4 That is what I use to steer from here to here, steering that
5 way. When I got to here, sir, I steer from here, for
6 this light here.

7 THE COURT: All right, what light is that?

8 THE WITNESS: This is Houghtaling Island. That
9 is No. 40, your Honor.

10 MR. ✓Volk: You want to circle that?

11 THE COURT: Why not circle that one, too?
12 Houghtaling Island Light? That is No. 40? And we will
13 draw a circle around that and I will put an arrow to it
14 and that will give us No. 4.

15 MR. ✓Volk: This has been premarked as Exhibit 6.
16 I would like to offer it in evidence.

17 MR. SCHULMEISTERS: 6?

18 MR. ✓Volk: 6.

19 THE COURT: Yes. Have you any objection to that?

20 MR. SCHULMEISTERS: I don't think that I saw
21 the course line that he put on. May I just look at it?

22 THE COURT: Sure.

23 O You drew a line? What was that line intended
24 to be?
25

1 mbrf

2 A The projected course of the vessel as I proceeded
3 north on the Hudson River. That is just one course.

4 The dotted line indicates what I am steering
5 on to check myself.

6 Q Will you describe to the Court what methods you
7 were using to navigate as you proceeded up toward
8 Houghtaling Island as you described?

9 A The method of navigation was what I would call
10 piloting by sight, visual piloting.

11 THE COURT: Visual?

12 THE WITNESS: Visual piloting, yes, sir.

13 Q Did there come a time when you passed the Morania
14 300?

15 A Yes, sir.

16 Q At what point in the river did you pass the
17 vessel?

18 A Right in the close proximity of Buoy 35. In
19 fact I lost sight of the buoy across the barge in his
20 light position.

21 THE COURT: In other words he was ahead of you.

22 THE WITNESS: No, he was south, coming south.

23 THE COURT: He was ahead of you coming south, and
24 you say that his vessel would obscure 35.

25 THE WITNESS: That is temporarily when he went
by, yes, sir.

Q Would you describe it as being abeam or nearly abeam of the buoy?

A It was nearly abeam, yes, sir, it could be a few feet further ahead. I saw we were clear of one another ~~and I threw him out my line.~~

THE COURT: What you are saying is it was clear and you think that this light on Buoy 35 was abeam of you.

THE WITNESS: Yes, sir.

THE COURT: Is that what you are saying?

THE WITNESS: Yes, sir.

Q Before you met and passed the Morania 300 could you see Buoy 35?

A Yes, I could, sir.

Q Did you pay any particular attention to that buoy?

A Oh, ~~yes~~^{yes}, it is a turning point. Like I say it is a turning -- it is a turning point of my next course and I try as always as possible to stay 100 to 200 feet off of it.

MR. SCHULMEISTERS: Excuse me, could I have the last answer read back?

THE COURT: Yes, read the last answer, yes.

(Answer read.)

Q What would you estimate the distance was between

1 mbrf

2 the Morania 300 and the Judy when you passed port to port?

3 A My estimation of distance was 100 feet, and I
4 base that on the length of the tug. It was about a tug
5 length off.

6 Q Was the passing in any way unusual?

7 A No, sir.

8 Q Was it a normal passing?

9 A The passage itself was normal, yes, sir.

10 THE COURT: You said you were going about six
11 and a half knots.

12 THE WITNESS: Yes, sir.

13 THE COURT: Have you any idea how fast the Morania
14 was going?

15 THE WITNESS: I would estimate in the vicinity
16 of eight knots only from knowing the vessel and the
17 condition she was in.

18 THE COURT: That was your impression?

19 THE WITNESS: Yes, sir.

20 Q Will you tell us what happened after that?

21 A Just shortly, I can't honestly say in a matter
22 of minutes, but shortly afterwards I felt three distinct
23 shocks from the forward end of the barge. My first thought --

24 THE COURT: What do you mean by shortly afterward?

25 THE WITNESS: I would say no more than a minute

1 mbrf

2 or minute and a half.

3 THE COURT: About a minute after you passed the
4 Morania?

5 THE WITNESS: Yes, sir, yes, sir. Minute, minute
6 and a half, sir. I couldn't be exactly sure. That is my
7 estimation.

8 O You say you felt three shocks?

9 A Three distinct shocks, yes, sir.

10 O And what did you conclude when you felt those?

11 A Well, I felt that I was in the deep water channel,
12 and it has been my experience in passing these submerged --

13 THE COURT: I don't think that is quite the
14 question. I think the question is after you felt the
15 three distinct shocks and you said something about they
16 were on the barge, is that right?

17 THE WITNESS: From the bow of the barge and
18 the shock is transmitted back to the tug, yes, sir.

19 THE COURT: Through the contact in the tug?

20 THE WITNESS: Yes, sir.

21 THE COURT: And from that you felt it was
22 on the barge?

23 THE WITNESS: Yes, sir. And -- I felt the
24 barge struck something.

25 THE COURT: All right. Felt the barge struck

1 mbrf

2 something.

3 THE WITNESS: My first impression and my first
4 thought was because I considered myself in the channel,
5 that a brick scow or stone boat had turned over, which
6 happens occasionally up there, and that is what I hit,
7 although I didn't see it, it didn't show on the radar,
8 I felt it might have been partly submerged I might have hit
9 something that was partly submerged.

10 Q What did you do?

11 A I immediately felt the shocks, I stopped the
12 engines, and immediately had the seaman go down. I blew
13 the whistle to arouse the barge crew. I immediately
14 had my seaman go down and notify them that we had
15 struck something, to start his pumps because I didn't know
16 that he had a slack tank aft. If there was a
17 rupture I intended for him to pull out from forward or
18 any tank that was ruptured to save pollution, which we
19 were lucky enough to accomplish.

20 We didn't have any plugs. The deck hand went
21 down, he got the bargeman up. I saw the bargeman start his
22 pumps.

23 THE COURT: This is your deck man who went up?

24 THE WITNESS: Yes, sir.

25 THE COURT: He went up on the barge?

1 mbrf
2 THE WITNESS: Yes, sir. And the barge captain
3 made -- and my deck hand went forward, we had the searchlight
4 on at the time. I could see him distinctly up there.
5 They were sounding the starboard No. 1 tank, and then
6 apparently found that they had a hole in it there. So I
7 assumed that they started transferring back because we
8 didn't have any leakage. At the same time my engines
9 were stopped I looked down on the after end of the barge
10 because you have this fair water coming when you are
11 going ahead, and if I hit any wreckage I expected to see
12 wreckage, but I saw nothing.

13 Well, I then proceeded at slow speed. The barge
14 captain notified me that he had the leak under control.
15 He was transferring oil from No. 1 to his No. 6 tank,
16 I believe, and I am sure -- the after tank at any rate --
17 and I proceeded at slow speed, and immediately called
18 this Morania 300 to ask him if he had ^{SEEN}~~saw~~ anything in
19 the river that I might have hit.

20 Q What did he respond?

21 A He said no, he didn't see anything. He said,
22 "I saw nothing, I don't know what you could hit where you
23 were," indicating that I was in the channel.

24 Q Where was the barge captain at the first shock?

25 A He was in his room. I don't know whether he was

1 mbrf

2 asleep or reading. He was in his room at any rate.

3 O Was anybody on the deck of the barge at the time?

4 A No, sir.

5 O Did you attempt to notify the Coast Guard?

6 A Yes, we did. I had to -- I called on the Coast
7 Guard frequency in Albany, but I was unable to raise anybody.
8 I was finally able to raise the mate on the Sheila Moran
9 or the deck hand, whoever was on watch on the Sheila
10 Moran at Albany, and I asked him to notify the Coast Guard
11 of the condition, also to notify the office, my office,
12 Moran in New York.

13 O Did you note the time of this casualty?

14 A Yes, I believe it is noted there, I believe it
15 is around 12:15, was it, or -- I believe a time is noted on
16 the log sheet.

17 O Did you enter it in your logbook?

18 A Yes, there was a time in the logbook.

19 THE COURT: 0015, is that it?

20 THE WITNESS: Yes, sir.

21 O Did you make an entry concerning the place of the
22 casualty?

23 A I will have to refresh my memory of what I did
24 do here. Yes, I did. I marked in here "Struck submerged
25 object or lump mid-channel approximately 300 feet out of

1 mbrf

2 Houghtaling Island Dike Light No. 36."

3 THE COURT: What does that last line say, "300
4 feet south of --"

5 THE WITNESS: Houghtaling Light No. 36.

6 THE COURT: Dike Light No. 36 is it?

7 THE WITNESS: Yes, sir.

8 Q Did you later have occasion to check the accuracy
9 of that position?

10 A Yes, I did.

11 Q Can you tell us whether the position as recorded
12 in the log is the place where you actually struck?

13 A No, I find I was in error in estimating when
14 I made that entry. To me, I can't remember whether I looked
15 up at the time I made the entry and said how far I was off
16 the light with the engine stopped and drifting up, of
17 course, or whether I estimated the time when I struck; but
18 I find out that I was further south than the 300 feet.

19 Q You were further south?

20 A Yes, sir.

21 Q How about your position with respect to the
22 channel? Were you in or out of the channel?

23 A I was in the channel. I was safely in the channel
24 as far as I am concerned, and all the voyages I have made
25 on this river.

1 mbrf
2 Q The Houghtaling Light which you mentioned in the
3 log, is that the light which is marked No. 3 here on
4 the chart?

5 A No, this is the -- the one I was standing for
6 at the time.

7 Q In the logbook you mentioned the light?

8 A Houghtaling Dike Light, yes, this is it.

9 Q No. 3?

10 A Yes, sir.

11 THE COURT: No. 3.

12 MR. ~~WOLK~~: Yes, sir.

13 Q Did you later have occasion to mark the position
14 where you estimated you went aground on the cart of the
15 tug Judy Moran which is Exhibit 3?

16 A Yes, when the Coast Guard came aboard in Albany,
17 they asked me my approximate location and I marked it
18 with a small dot here, this dot right here. There is
19 a mark opposite that I don't know anything about.

20 THE COURT: Would you like to come look at that?

21 MR. SCHULMEISTERS: Yes, I would like to look
22 at this dot.

23 THE WITNESS: It is the mark I made for the
24 Coast Guard in Albany.

25 MR. SCHULMEISTER: That is right next to the mark
that looks like the size of a --

1
2 THE WITNESS: I just marked it there for the
3 Coast and just to show them that this was approximately
4 where I thought I was when I struck.

5 MR. SCHULMEISTERS: Thank you.

6 Q That is just a solid black pencil mark?

7 A Yes.

8 Q To the right of there, there is a little, what
9 looks like an X or two or three lines.

10 A I have no knowledge of how that got there.

11 Q You have no knowledge of how that came there?

12 A No, sir.

13 Q Does that spot which you marked on this chart,
14 Exhibit 3, represent to the best of your recollection the
15 position of the barge at the time you struck?

16 A Yes, it does, sir.

17 Q How wide is the channel just south of Houghtaling
18 Island?

19 A It is a Government project channel supposedly
20 400 feet wide although that ~~that~~ run from Buoy 30 to 35
21 is wider. It's a sort of a cutoff effect. But the
22 channel itself at Buoy 35 northward is 400 feet.

23 THE COURT: You have me confused now. Where
24 was the channel 300 feet wide?

25 THE WITNESS: The channel was 400 feet wide, sir.

1

2

THE COURT: 400 feet?

3

4

THE WITNESS: Yes, sir, and below Buoy 35, to the vicinity of Buoy 30, you have a --

5

THE COURT: South?

6

7

THE WITNESS: Yes, sir, south of that. You have a little wired, a cutoff sort of effect.

8

THE COURT: Then north of Buoy 35.

9

THE WITNESS: Is 400 feet, sir.

10

THE COURT: Still 400 feet?

11

THE WITNESS: Yes, sir.

12

13

14

Q Now going back to the time before you passed the Morania 300, you say that before you passed you could see Buoy 35?

15

A Yes, sir.

16

Q It has a green flashing light?

17

A Yes, sir.

18

19

Q At that time did you assume Buoy 35 to be on station?

20

A Yes, sir.

21

22

23

THE COURT: How do you mean did he assume it to be on station? Did you think about that? You have been going up and down this all the time, haven't you?

24

25

THE WITNESS: Yes, sir, and when we know something that does not seem right we start checking and measuring,

1 mbrf
2 and then advising other pilots.

3 THE COURT: What you are telling me is you didn't
4 assume anything, but looking at the river, Buoy 35 looked
5 where it ought to be.

6 THE WITNESS: On my approach to it, yes, sir.

7 Q It has been admitted by the Government in the
8 case that when you passed Morania 300, Buoy 35 was in
9 fact 50 feet off station to the east, that is, inside the
10 channel.

11 Can you tell the Court what effect if any that
12 had on your navigation?

13 A Well, it would shift my position 50 feet further
14 to the eastward or if I was on the edge it would put me
15 out of the channel; but I at the time with the best of my
16 ability, I thought I was still in the main channel.

17 THE COURT: Where was your bearing at that time?
18 You said something about the south end of Houghtaling
19 Island.

20 THE WITNESS: If I might have the chart, sir --

21 THE COURT: Surely.

22 MR. VOLK: The question was again, your
23 Honor?

24 THE COURT: I thought his bearing was somewhere
25 on the south end of Houghtaling Island.

1 mbrf
2 THE WITNESS: No, that was on the approach of
3 35. Now I had passed 35 and I was steering on Houghtaling
4 Island Light No. 40.

5 THE COURT: All right.

6 THE WITNESS: And my check point astern is
7 Stuyvesant -- what I call Stuyvesant Light No. 30.

8 Q That would be No. 1 on this chart?

9 A Yes, sir, and that would be the way I would check.

10 MR. SCHULMEISTERS: Read the last back checking
11 over Stuyvesant Light No. what?

12 THE WITNESS: 30.

13 MR. SCHULMEISTERS: Isn't it 32?

14 THE WITNESS: 32, yes, I'm sorry. I stand
15 corrected, 32.

16 Q 32 has been marked on this chart. I'm sorry.
17 Do you want to mark the Stuyvesant Light which is No. 32?

18 A Yes, sir.

19 Q That is right next to the Buoy 30, isn't it?

20 We will mark that Stuyvesant No. 5.

21 Q Did you, on or about November 2, 1973, at-
22 tend at a survey of that area which was conducted by the
23 Army Corps of Engineers?

24 A Yes, I did, sir.

25 Q Will you tell us how that survey was conducted?

1 A I met with the Army Engineers at a small boat
2 landing in the vicinity of Matthews Point, there was a
3 man representing the Hudson River Commission, and two
4 Army Engineering personnel in the boat. They had an
5 outrigger I consider maybe three to four feet over each side
6 of it, and they put a transducer effect unit on each side.
7 They had a graph in the middle of the boat, outboard
8 motorboat, I believe, small of that type; and we ran
9 the river and they started this machine sounding, and it
10 indicated on the graph the depth of water underneath it.

11 Q These transducers I think was what you said they
12 were?
13

14 A Yes, sir.

15 Q On the outriggers they are really depth finders,
16 is that what they are?

17 A Yes.

18 Q And the depth of water is recorded on a tape?

19 A On a graph sheet that I guess they record the
20 time, on this sheet and the marks on it. In watching them
21 do this and run this graph they had men with civil engineers'
22 instruments ashore and VHF communications.

23 THE COURT: Let me in on a secret. They were
24 out there looking for the submerged object, is that it,
25 and taking soundings?

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THE WITNESS: Yes, sir.

THE COURT: Is that what they were doing?

THE WITNESS: Yes, sir.

THE COURT: When did this happen?

THE WITNESS: It was November. It was rather
a cold day, I remember.

THE COURT: Two days after.

THE WITNESS: About a month later or two weeks
or three weeks.

MR. VOLK: It was about two weeks, your Honor.

THE COURT: All right.

Q The purpose of the survey was to locate the
object which you had struck?

A That I struck. Yes, sir.

Q Did you look at the graph as it was being
recorded on the boat?

A Yes, sir.

Q You were on the little survey boat itself?

A Yes, sir.

Q Did you point out to the engineers the place in
the river where you estimated you had struck?

A Yes, I did, sir.

THE COURT: What time of the day were you doing
this?

1
2 THE WITNESS: I believe it was in the afternoon,
3 2:00 or 3:00 o'clock. A rather chilly day.

4 Q I show you a graph, fathometer graph and ask
5 you if that is the graph that was obtained on the occasion
6 when you were sweeping the river with the Army Engineers?

7 A Fathometer graph, this is one of them.

8 Q Do you recall this particular one when it came?

9 A I can't identify that particular one, no, sir,
10 but they had one similar to that; but there was another
11 one with a much sharper reach on it that they ran. When
12 they hit that spot it was a very abrupt rise and fall on
13 the graph on the boat that I saw. I saw them make these
14 here that run from different angles. They run this thing
15 from different angles, you see.

16 Q On the runs that the boat was making, did it go
17 up and down the river or across the river?

18 A He was primarily going up and down, but he did
19 go across , too.

20 Q I show you Army Corps of Engineers chart. Do
21 you recognize this as a chart that was prepared?

22 A Yes, sir.

23 Q Prepared as a result of the survey you made that
24 day?

25 A Yes, sir.

1 mbrf
2 MR. SCHULMEISTERS: I object. I don't think
3 he is competent to testify to that, your Honor.

4 THE COURT: Well, he identified it. Who prepared
5 that chart?

6 MR. ~~V~~OLK: The Army Engineers, your Honor.

7 THE COURT: How did you find out about this
8 chart?

9 THE WITNESS: I was advised that they had prepared
10 this chart from those soundings and sent it to --

11 THE COURT: They told you about it?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right.

14 MR. ~~V~~OLK: I offer this chart in evidence.

15 THE COURT: He is going to object to that. Mark
16 it for identification.

17 MR. ~~V~~OLK: I have it marked for identification
18 as Exhibit 7.

19 MR. SCHULMEISTERS: Even allv, your Honor, I have
20 no objections to this, but as far as this witness is
21 concerned --

22 THE COURT: If you are going to have no objections
23 to it eventually, I think I will receive it.

24 MR. SCHULMEISTERS: It is a copy of a survey made
25 by Army Engineers, your Honor.

1 mbrf
2 THE COURT: All right.

3 (Plaintiff Moran Exhibit 7 received in
4 evidence.)

5 Q Is that the kind of high spot which you recall
6 they found on the afternoon --

7 THE COURT: What kind of a spot?

8 MR. ~~W~~OLK: High spot.

9 Q -- that you described?

10 MR. SCHULMEISTERS: I object. I don't think --

11 A I would have to --

12 THE COURT: Yes, I think it is quite a leading
13 question.

14 MR. ~~W~~OLK: All right, I will withdraw the
15 question.

16 THE COURT: Thank you.

17 Q I show you what I believe to be a copy of this
18 chart which is already marked Exhibit 7, and ask you to
19 look at position B.

20 A Yes.

21 Q Is that location that you described the Army
22 Engineers was the place where you struck?

23 A That's right. That is where I --

24 MR. SCHULMEISTERS: Objection, your Honor. For one,
25 I don't think that survey existed at the time.

1 mbrf

2 MR. VOLK: With reference to the channel line
3 and general reference to the buoys, I think he is competent
4 to answer.

5 THE COURT: Well, I think the question is,
6 does that indicate the position that you informed the
7 Coast Guard as to where you --

8 THE WITNESS: The Army Engineers, well, yes,
9 this is where I estimated myself by some quick reference
10 upon striking. This is where I thought I was, yes, sir.

11 MR. SCHULMEISTER: What exhibit is that?

12 MR. VOLK: I would like to offer this in
13 evidence if I may. It is Exhibit 27. Is that all right,
14 your Honor? I have it typed up that way.

15 THE COURT: Well, 27. Make it 27. Do you
16 have any objection to that?

17 MR. SCHULMEISTERS: No objection to that, yes,
18 sir.

19 (Plaintiff Moran Exhibit 27 received in
20 evidence.)

21 Q You say while you were watching the fathometer,
22 there came a time when they ran over a high spot?

23 A Yes, sir.

24 Q Could you describe the high spot to the Court
25 as you saw it on the graph?

1 A On the graph the line went along in a 30-foot
2
3 area, approximately 30, 31, 30, 31, and then all of
4 a sudden it shot rather rapidly to 17 feet and dropped
5 directly off again.

6 I believe that was when he went across to find it.

7 THE COURT: When he went across?

8 THE WITNESS: In other words, in an east-west.

9 THE COURT: His course was across the river?

10 THE WITNESS: The course was across the river
11 rather than south.

12 THE COURT: That is when you noticed that?

13 THE WITNESS: That is when he found it, when he
14 made that sharp rise in there.

15 Q Prior to October 18, 1973, did you know of
16 the existence of that rock peak?

17 A No, sir.

18 MR. SCHULMEISTERS: Objection. I think that
19 is leading. Nobody has talked about the rock peak so far.

20 Q Whatever it was he saw --

21 THE COURT: Whatever it was, I think it was
22 self-serving, and I sustain the objection to that question.

23 Q With reference to that Army Engineers chart
24 which is in evidence as Exhibit 7, I call your attention
25 to the red area which is outlined there just up river,

1 mbrf
2 and across from Buoy 35, and ask you if before October
3 18, 1975, whether you were aware of the existence of that
4 spot?

5 A No, sir.

6 Q What does that spot indicate as to the depth
7 of the water from the top of the spot to the surface?

8 A Here I will have to say on the fathometer,
9 the sounding measure, on that it rose to 17, a little
10 over 17 feet.

11 Q What does it show on this chart?

12 A 7.6. I believe that is a 7, isn't it, or is
13 that a --

14 MR. SCHULMEISTERS: We respectfully submit this
15 witness is testifying as to what it shows. I don't think
16 he is qualified as someone who can transfer from the
17 fathometer to this type of chart. I think the type of
18 evidence through this witness --

19 THE COURT: He is not testifying to the truth
20 of it. He is testifying to what it looks like to him.

21 Q As part of your profession, do you make it a
22 practice to keep up to date with notices to mariners?

23 A Yes, sir, I do.

24 THE COURT: With what?

25 MR. WOLK: Notices to mariners published by the

Government.

A Yes, sir.

O Prior to October 18, 1973, were you aware of any notice to mariners advising of the existence of that spot which was indicated in red on Exhibit 7?

A No, sir.

O Was that high spot in any way shown on the chart which you had aboard your vessel, the Judy Moran?

A Not to my knowledge, no, sir.

O Is it important for you as a navigator to know the nature of the bottom where you are proceeding?

A Yes, sir, both inside and outside the channel.

O Does the ^{CHART}~~map~~ which you have ^d~~have~~ aboard the vessel give you any information as to the state of the bottom along the easterly edge of that channel?

A No, sir.

THE COURT: You have been looking at all these charts. This spot that you have marked, is that inside the channel which you have talked about?

THE WITNESS: Your Honor, I believe that is the bone of contention here. To my knowledge, it was from the chart I am using, from the Coastal Survey Chart and all the marks I have to navigate that river, I consider myself inside the channel.

THE COURT: ou considered where this occurred

1 inside the channel?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 O If you had known that there was a rocky high
5 spot at that point --

6 MR. SCHULMEISTERS: Excuse me, your Honor, what
7 point are we talking about?

8 THE COURT: Wherever the rocky high spot is, and
9 I am going to sustain the objection to that question.
10 I don't think he said anything about a rocky high spot.

11 O If you had known that high spot as shown on
12 that chart, Exhibit 7, had existed before October 18,
13 1973, would you have navigated in the same way as you did?

14 A No, sir.

15 MR. SCHULMEISTERS: Again, same objection.

16 THE COURT: I am sure he would have navigated
17 it all right.

18 I am going to take a recess. I have to receive
19 a jury verdict. I will give you a couple of minutes and
20 we will get the lawyers in, and come back, and I will
21 hear the verdict.

22 (Recess.)

23
24
25

1 mbrf

2 BY MR. ~~WOLK~~:

3 Q I put before you again, Captain, this Exhibit
4 7 and I will ask you to assume that that red spot is
5 in fact the remains of an old Coast Guard lighthouse, and
6 is solid rock.

7 MR. ~~WOLK~~: Which I will prove, your Honor, by
8 the Government's own documents.

9 Q If you had known that that was a solid rock
10 pinnacle --

11 THE COURT: I think you just answered it.
12 If he had known there was any obstruction that was solid
13 rock he would not have gone over it, is that what you said?

14 THE WITNESS: I would have given it a wide
15 berth.

16 THE COURT: It wouldn't make much difference to
17 you whether it was the base of a lighthouse or an old
18 wreck?

19 THE WITNESS: Yes.

20 BY THE COURT:

21 Q Since you didn't know it was there you had no
22 warning of it, is that right?

23 A That is correct.

24 MR. SCHULMEISTERS: I object, your Honor, that
25 is leading.

1 mbrf
2 THE COURT: All right, he just said he wouldn't
3 I can understand his point.

4 You wouldn't deliberately run over a --

5 THE WITNESS: No, sir.

6 THE COURT: All right.

7 BY MR. VOLK:

8 Q And no navigation or any other governmental
9 publication indicated that that lighthouse base was there,
10 did it?

11 A No, sir.

12 THE COURT: That is leading again, but I think
13 I understand the answer. No chart that you saw had
14 marked this obstacle, is that right?

15 THE WITNESS: That is correct, sir.

16 THE COURT: All right.

17 Q Could you tell the Court what a range is?

18 A A man-made range is usually a structure one
19 higher and behind a lower one, painted various prominent
20 colors, that you line up to take say in a center line
21 of a channel. If you line them up and they are in line
22 or in range then you are in the center line of that
23 channel as long as you keep them in line, one below the
24 other.

25 Q And would the range be set on posts or poles

1 or pylons ashore?

2 A Yes, or it could be a set of pylons in the water.

3 Q But the idea would be that when they are in line
4 the navigator would know he is in it?

5 A On the center line of that channel, yes.

6 Q Is there a range established to assist the
7 navigators in the area where Buoy 35 is located?

8 A No, sir.

9 Q Would such a range have been of assistance to
10 you in maintaining your position on the night of October
11 18, 1973?

12 A As to the center line of the channel, yes, sir.

13 Q Now with respect to the chart that you have aboard
14 your vessel, Moran Exhibit 3, do you have any comment to
15 make as to the scale of that chart?

16 MR. SCHULMEISTERS: I object. I don't think he
17 has been qualified.

18 THE COURT: Would you read the question?

19 (Question read.)

20 THE COURT: Well, I think I will sustain the
21 objection to that question. Captain, you use charts
22 all the time, I take it, don't you, in your work?

23 THE WITNESS: Yes, sir, that is where I get
24 all my information from.
25

1 mbrf

2 THE COURT: That's right, and most of them
3 are all Coastal Geodetic Survey Chart charts or
4 government charts of some kind.

5 THE WITNESS: Yes, sir.

6 THE COURT: Is there any great difference in
7 them?

8 THE WITNESS: Well, there is in this one. It's
9 a common fault that not only myself but many men using
10 this river find. It is too small a scale to give
11 proper information.

12 THE COURT: Your view is that as a navigator
13 in the Hudson River you wish the charts were bigger than
14 they are.

15 THE COURT: The scale was larger so they could
16 put all the details that we need to know on that chart.

17 THE COURT: I see but there is nothing about
18 this chart that was peculiar to other charts you have
19 seen on the Hudson River, is there?

20 THE WITNESS: No, sir, outside of the scale.

21 THE COURT: Outside of the fact you would
22 rather see them larger scale.

23 THE WITNESS: Yes, sir.

24 Q That is the only chart for the area of the
25 Hudson River?

1 A That is the only Coast and Geodetic or NAPA
2
3 chart that is made for this area, yes. Army Engineers
4 have one but I don't have access to them. This is the
5 only chart I have access to.

6 MR. SCHULMEISTERS: Excuse me, may I have that
7 last part read about the Army Engineers having a chart.

8 THE COURT: We read the answer.

9 A Yes, the Army --

10 THE COURT: Let the reporter read the answer.

11 (Last portion of last answer read.)

12 Q Did you file a report with the Coast Guard?

13 A Yes, I did, sir.

14 Q I show you a document. Is that your report to
15 the Coast Guard?

16 A Yes, sir.

17 MR. VOLK: I offer it in evidence.

18 THE COURT: Have you seen this report?

19 MR. SCHULMEISTERS: Yes.

20 THE COURT: Do you want to take a look at it?

21 MR. SCHULMEISTERS: No objection.

22 THE COURT: It will be received.

23 (Plaintiff Moran Exhibit 4 received in
24 evidence.)

25 Q Did you make a damage report to Moran?

1 mbrf
2 A Yes, I did, sir.

3 Q I show you a document and ask you if that is a
4 copy of your damage report?

5 A Yes, sir.

6 MR. VOLK: I offer it in evidence.

7 MR. SCHULMEISTERS: No objection.

8 (Plaintiff Moran Exhibit 36 received in
9 evidence.)

10 MR. VOLK: You may cross examine.

11 CROSS EXAMINATION

12 BY ~~MR.~~ MR. SCHULMEISTERS:

13 Q Captain Maynard, you mentioned that you have a
14 deep sea master's license.

15 A Yes, sir.

16 Q Does that entail the taking of examinations?

17 A Yes, it does, sir.

18 Q Does that entail the taking of examinations
19 that are closed book?

20 A Yes, sir.

21 Q Do you also have -- I think you mentioned you
22 had some pilot endorsements for some areas.

23 A Yes, I do.

24 Q You did not specify. Do they entail taking of
25 examinations that are closed book examinations?

1 mbrf
2 A Yes, they do, sir.

3 Q During those examinations, do you have to draw
4 a chart of the area?

5 A When I did, yes, but today I don't.

6 Q All right.

7 The other places where you do have a pilotage
8 endorsement you do have a chart, is that right?

9 A No, sir, I must qualify that. One place was
10 furnished the outlines that I didn't have to draw. I
11 had to draw the courses, aids to navigation, dangers to
12 navigation in them, yes, sir.

13 Q You had to draw the ~~objections~~ ^{obstructions} and dangers in
14 there?

15 A Yes, sir. But originally, originally the
16 examination was you had to draw the land, too, which was
17 quite difficult.

18 Q Now, you also do all the aids there, the
19 fixed aids?

20 A Yes, sir.

21 Q And you do the floating aids?

22 A Yes, sir.

23 Q And for those areas you studied up on the area?

24 A Yes, sir.

25 Q You do not have a pilotage license for the

1 mbrf

2 Hudson River, do you?

3 A Not in a sense of first-class endorsement on my
4 license, no.

5 Q Did you have in 1973 an endorsement as a pilot
6 for the Hudson River?

7 A First-class pilot unlimited? Is that what you
8 are asking me?

9 Q Do you have an endorsement as a pilot for the
10 Hudson River?

11 A I was qualified to act as a pilot on the Hudson
12 River by law.

13 Q Have you taken an examination as Hudson River
14 pilot?

15 A No, I have not, no, sir.

16 THE COURT: Don't argue, gentlemen. You say
17 that in 1973 you were qualified as a pilot?

18 THE WITNESS: Yes, sir.

19 THE COURT: Is that right?

20 THE WITNESS: To act as pilot on the Hudson
21 River.

22 THE COURT: What is your question?

23 Q Did you take any examination for pilotage on
24 the Hudson River?

25 A No, sir.

1 mbrf

2 MR. ~~V~~OLK: I object to that.

3 THE COURT: He can answer that whether he took
4 an examination.

5 THE WITNESS: I have no objection. No, I
6 didn't take an examination.

7 THE COURT: All right. No, he didn't take an
8 examination.

9 MR. ~~V~~OLK: My objection, your Honor, is he is
10 arguing about the law. He was clearly qualified.

11 THE COURT: No, he just asked if he took an
12 examination. He said no.

13 Q Captain Maynard, do you recall that you
14 testified at a deposition?

15 A Yes, sir.

16 MR. ~~V~~OLK: Let's please mark this as Government's
17 Exhibit A for identification.

18 THE COURT: You don't need to do that. If
19 you have a copy just tell him the page number.

20 MR. SCHULMEISTERS: I wanted to hand the
21 original to the witness.

22 THE COURT: Hand him the original. All right.

23 Q Would you please turn to page 7, look at lines 17
24 through 19 and I will quote the question and the answer.

25 THE COURT: Ask him, were you asked this

1 mbrf

2 question and did you give this answer.

3 Q Do you recall, did I ask you this question:

4 "Q You are not licensed as a pilot for the Hudson
5 River?

6 "A No, I am not."

7 Did you give that answer?

8 A I answered -- yes that is what is in the book,
9 yes.

10 Q Thank you.

11 Did you give that answer?

12 A Yes.

13 Q Thank you.

14 Were you under oath at that time?

15 A Sir?

16 Q Were you under oath?

17 A Yes, yes.

18 Q Thank you.

19 Just to clarify one more thing, on the license
20 that you have, do you have -- may I see it, please?

21 A Sure.

22 Q On this license I know there are endorsements
23 first-class pilot between Newport News and Norfolk, et
24 cetera.

25 A Yes, sir.

1 mbrf
2 Q There is no such endorsement for the Hudson River,
3 is there?

4 A No, sir, it is not required, sir.

5 MR. SCHULMEISTERS: I move to strike that last
6 part as not responsive.

7 THE COURT: No, no.

8 MR. VOLK: I would ask the Court to ask him not
9 to argue with the witness.

10 THE COURT: He says no, it is not required.
11 That is the point. All right.

12 MR. SCHULMEISTERS: All right.

13 Q In taking your examinations as a master mariner
14 and as a pilot in some other areas, did you ever have
15 occasion to refer to a book by the name of Bowditch?

16 A Yes, sir.

17 Q I show you a volume. Do you recognize that as
18 a standard text for navigators?

19 THE COURT: Take a look at it.

20 A Unfortunately, this is a more up-to-date one.

21 THE COURT: Bowditch has gone on a long time.
22 I will take judicial notice of that.

23 A My volume at home is much older than this, sir.
24 I am afraid I might not be as up-to-date.

25 MR. SCHULMEISTERS: I believe that is a '68

1 mbrf

2 volume. This is a '58 edition.

3 THE COURT: All right.

4 THE WITNESS: I think, sir, all of my licenses
5 ~~was~~ ^{WERE WRITTEN} wrote before that book was printed. I think, I am
6 not sure.

7 Q All right. When you pilot up a river such as
8 the Hudson River, do you plot each and every course on a
9 chart?

10 A Originally, yes. On my first 20, 30, 40 trips
11 perhaps yes, and I check and recheck and check and recheck.

12 THE COURT: I am not entirely clear. You mean did
13 he plot his course in advance of going up the river?
14 Is that the question?

15 MR. SCHULMEISTERS: No, actually it was not.

16 THE COURT: Or did he plot as he was going along?
17 I am not quite clear.

18 MR. SCHULMEISTERS: Let me put that again,
19 if I may.

20 THE COURT: All right.

21 Q Originally did you preplot courses prior to your
22 voyage?

23 A On this particular voyage?

24 Q No, no, you say originally, you said you did
25 that, right?

1 A Well, I first started to run the river, yes, I did.

2 THE COURT: That was in advance? You plot a
3 course on the chart before you actually started the voyage?
4

5 THE WITNESS: Yes, sir.

6 Q Did you preplot a course this time?

7 A No, sir.

8 Q When you preplotted these courses did you ever
9 take into consideration that you may have maneuvers
10 with respect to other vessels?

11 THE COURT: Wait a minute. I am going to sustain
12 the objection to that. He didn't preplot this course.
13 I don't see that it has any bearing.

14 Q Have you ever heard of the expression a danger
15 angle or a danger bearing?

16 A Oh, yes.

17 Q What is a danger bearing?

18 A A danger bearing is a bearing of an object
19 that projects, for instance, this particular hazard here,
20 you could have a red sector of a lighthouse or a bearing
21 from yourself if you knew the light beared, say 300
22 degrees and anything to the left of that 300 would keep
23 you safe and anything to the right of it you would be on --
24 in the danger, yes. You can. You use that many times
25 in the river by natural ranges.

1 mbrf

2 Q You od use natural ranges in the river?

3 A Yes, sir.

4 Q Did you use natural ranges to pilot on this
5 evening?

6 A Yes, sir.

7 Q What was the course that you were steering as
8 you were coming up to Buoy 30?

9 A That course, what we have what we call a base
10 course, sir. That is what he called a preplot course
11 that you would use to carry you on the various reaches of
12 the river.

13 Now as you go on to that base course you might
14 through meeting traffic go to the right a little bit so
15 therefore you wouldn't steer that base course, you would
16 alter one or two degrees to the left to get you back to
17 where you were when you met the traffic. The course I used
18 going up there is about five and a half, from Buoy 30 to
19 Buoy 35, is about five and a half headed on that dike.

20 Q I think my question was what course did you
21 steer before you reached Buoy 30.

22 A That is the course I was steering about five or
23 five and a half degrees.

24 Q 005 or 005 and a half?

25 A Five ^{is} in the base course, I use roughly.

mhrf

Q Would you look at the chart, please?

A Yes, sir.

Q I am talking about you coming up to Buoy 30.

A Yes. On Buoy 30, I was talking of 35.

THE COURT: The question is 30.

A 18, I steer a base course of 18, 018.

Q And once you got to Buoy 30, then you say you steer a course of five and a half degrees?

A Of five or five and a half is what I use for a base course with Houghtaling Dike Light dead ahead, yes, sir.

Q And you were heading for Houghtaling, for the Dike Light 36?

A Yes, sir.

Q The next course after that is what?

A The next course after that is approximately 355 for a base course.

Q And that is that a course that is in line from Light 32 to Light 40?

A Yes, sir.

Q And a line drawn from Light 32 to Light 40 would proceed up the dredged channel?

A Yes, sir.

Q And that is a line that you follow as you go up,

1 mbrf

2 right?

3 A That is correct, in the light 32 as turn is
4 my insurance that I cannot let it get on a port side of
5 the vessel or I will be out of the channel.

6 Q And your testimony is that you -- I will withdraw
7 it if I may.

8 Did you use Light 32?

9 A Yes.

10 Q And Light 40 on this evening?

11 A Yes, I did, sir.

12 Q Did you change to that course of 355 ~~growing~~
13 when you reached the point where your tug was on that line
14 between 32 and 40?

15 A No, sir, I did it prior.

16 I went into the hight and did it prior because to
17 straighten away that when I met this Morania 300 we would
18 be on reciprocal courses and we could not be in the swing
19 of one another.

20 Q You say you went into the hight. What is the
21 hight, sir? Would you show that to me, please?

22 A Yes, as you might see, this is what we call a
23 cutoff, you see. Now you have your dredged channel.
24 This is a wider spot than the rest of your change.

25 Q Let me hand you a black pen and could you please

1 mbrf

2 circle the area that you call a bight.

3 A (Witness complies.)

4 Q You have drawn a black line.

5 A Within the channel limits this is what I would
6 call the bight of this two courses, yes, sir.

7 Q Are you talking about the area to the right
8 of this black line?

9 A No, the area to the left of the black line
10 and the channel numbers.

11 In other words, I got my -- instead of running
12 this course up to here, which takes me mid-channel a little
13 closer to this buoy in mid-channel, I let the barge come
14 up in here and shapped up this next course.

15 Q All I was trying to do was get an explanation
16 what the word bight means.

17 A All right. That is what I call the bight, the
18 intersection of these two channel lines east channel
19 these two channel lines plus that black mark I put on
20 there.

21 Q So that is the area that is called the bight?

22 A That is what I would term the bight of that
23 particular reach, yes.

24 Q So actually it is an area approximately about
25 300 feet wide from the east channel line going to the west

1 mbrf

2 in the area where the channel --

3 A Say 200, say 200.

4 Q All right.

5 MR. SCHULMEISTERS: Your Honor, if I may draw
6 an arrow to this black line which he marked, and which
7 I understand this area is the bight. I will mark an
8 arrow to it and designate it bight.

9 THE COURT: What you have is the bight.

10 MR. SCHULMEISTERS: Yes.

11 Q Will you do that, please?

12 (Witness marked chart.)

13 A This, of course, you understand is in relation
14 to just this particular maneuver.

15 Q This is what you --

16 A This bight is what I call the bight of this
17 particular maneuver.

18 Q This particular maneuver. All right. Right.

19 And this bight is really the right-hand side
20 of the wider part of the channel?

21 A Yes, sir.

22 Q Did you actually go into the bight as you were
23 passing the Morania 300?

24 A No, sir, I hadn't met him yet.

25 Q You did not?

1 mbrf

2 A No, sir.

3 Q At no time?

4 A At no time did I meet him while I was in that bight,
5 no, sir.

6 Q Let me repeat my question.

7 At any time during that night did you go into
8 that bight?

9 A Yes, sir.

10 Q When?

11 A Prior to meeting -- prior to making my turn
12 on that next reach.

13 Q The length of your flotilla was 447 feet;
14 is that correct?

15 A No, it is not quite that much because the notch
16 of the barge would absorb perhaps 8, 10 feet.

17 Q The notch?

18 A Yes, some of them are 10-foot notches.

19 Q So 437 feet?

20 A I would say in the neighborhood of 430 feet,
21 something around that.

22 Q You were navigating from a point astern the
23 barge, right?

24 A Sir?

25 Q You were navigating or directing the navigation

1 mhrf

2 from a point astern the barge, is that correct?

3 A You could almost say, well, within a few
4 feet of the stern of the barge, yes, sir.

5 Q Forward or aft of the stern?

6 A After of the stern, yes, sir.

7 Q And that is where you were taking your sightings,
8 let's say, if you came abeam of something, right?

9 A All the sightings I was taking from there, yes,
10 sir.

11 Q So if we have, let's say, a light abeam, that
12 would mean abeam of the tug?

13 A Of the pilot house, yes, sir.

14 Q You mentioned that you changed your course left
15 to 355 when you were abeam of Buoy 35?

16 A That is in normal procedure that you would do.
17 But in this particular case because of them being downstream-
18 bound I tried to get on to that course before I met the
19 ship.

20 Q Did you meet the MORania 300 before or after
21 you passed the Buoy 35?

22 A Precisely at the buoy. Within two or three
23 feet one way or the other.

24 Q Had you changed your course to 355?

25 A Yes, I was on that northbound course, yes, sir.

1 mbrf

2 Q And had you checked your course at that time
3 with respect to the Light 40 and 32?

4 A Yes, sir.

5 Q Did those two lights give you a range to go
6 with your course?

7 A Not a range, no, you couldn't say it is a range.
8 It gives you a guide because one is ahead and one is
9 astern, you see, and again you are going by eye, and
10 besides that --

11 Q Excuse me, did you --

12 MR. VOLK: He cut him off, your Honor.
13 I would like to have him finish.

14 A As I understand it, he wants to know just precisely
15 how I was navigating.

16 THE COURT: That's right, that is what he is
17 asking.

18 A Also I had the searchlight directed on Buoy 39.

19 Q 39?

20 A Yes, sir, that is the black can buoy off of
21 Matthews Point, and the range, I could see the New
22 Baltimore Range light cracked open to the left just almost
23 in range with that black can buoy where I considered
24 myself in fair water. That is about all the ways
25 that I know to check going up and down that range.

1 mbrf

2 BY MR. SCHULMEISTERS:

3 Q I believe your last response was that you were
4 lined up with one of the lights from the New Baltimore
5 Range across Buoy 39.

6 A No, I was not lined up with them. I had the
7 searchlight on that buoy and noted that the New Baltimore
8 Range was cracked to the left, almost in line with the
9 buoy, just for all intents and purposes in range with
10 that buoy.

11 Q And that is what you tried to depict on the
12 diagram which is the third page of Exhibit 36, is
13 that correct?

14 A Yes, sir.

15 Q That shows the point as you knew it when
16 you were drawing the diagram when the barge struck,
17 whatever she struck?

18 A Yes, sir.

19 Q Incidentally, as you were navigating after you
20 had changed to the course of 355, you were using what
21 you have sometimes called "My own personal range for
22 steering."

23 A Houghtaling Island, yes.

24 Q In other words, steering first from Buoy 30
25 area to the dike light, No. 36, then steering for

Houghtaling Island Light 40?

A I considered them my --

Q With Light No. 32 over your stern?

A Yes, sir.

Q You considered them your personal ranges?

A Yes, that is what I evolved out of that Coast and Geodetic Survey after preplotted plots that I started with years ago.

Q That is what you had originally preplotted to navigating in that area?

A Yes, sir.

Q Now I have here a Xerox of some pages from the Bowditch, and particularly starting with page 255.

May I show that to the witness?

That is page 255.

A Yes, sir.

Q Is there a description, sir, of how you can use a light as a danger bearing?

A Yes, sir.

Q If you know the course for the Houghtaling Light 40 to be 355 degrees, and if you have a gyro, which you say you did, you would be able to keep your ship in the channel by reference to that fixed aid?

A Yes, sir.

1

2

Q And the additional fixed aid with reference
to you would be Light 32?

3

4

A Astern, yes, sir.

5

6

Q And as you are navigating upriver and making
your turn, you can keep yourself well within the channel
with reference to these two lights, 32 and 40?

7

8

A Yes, sir.

9

10

Q Is that the way you usually navigate up the
Hudson River?

11

A In that particular area, yes.

12

13

Q If you did that, you would be within the channel
all the time?

14

A Yes, sir.

15

16

Q Mr. Volk showed you some surveys which show
an obstruction outside of the channel, is that correct?

17

18

A After this collision, I became cognizant of
that. Or after this grounding, I should say.

19

20

Q Let me show you now Exhibit 3, which is your
own chart. Does that have a 17-foot sounding just
outside of the edge of the channel?

21

22

A Yes, sir.

23

24

Q Would you steer a barge over that 17-foot
sounding?

25

A No, sir.

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Q Regardless of what the bottom is?

A No, sir.

Q It also has a 19-foot sounding, does it not?

A Yes, sir.

Q Would you steer your barge drawing 21 and a half feet across that 19 foot sounding regardless of what the bottom is?

A No, sir.

Q All right.

Now you say you have gone up and down the Hudson River for a number of years?

A Yes, sir.

Q Have you known it to be rocky?

A Not in that particular area, no, sir. I know just above that area between the 35 and the 29 buoy, I know that -- I made passages when they were drilling rock out of there.

Q When was that?

A Oh, I think around 1963, around '63 I believe. I am not sure of the year. It is quite a while ago, '66, '63.

Q Excuse me --

MR. SCHULMEISTERS: Incidentally, your Honor, I would like to mark those pages from Bowditch in

1 mbrf

2 evidence if I may.

3 MR. VOLK: I don't see any relevance or connection
4 with this particular case.

5 THE COURT: Well, I will let him mark it.

6 Are you familiar with this passage from Bowditch?

7 THE WITNESS: Yes, sir.

8 THE COURT: Is that something which you studied?

9 THE WITNESS: Yes, sir.

10 THE COURT: All right, then I will allow it.

11 THE WITNESS: I think if I might answer this
12 gentleman in regards to this danger bearing, it also
13 says in there that I use a danger bearing as something of
14 a known danger but I didn't know this danger existed.

15 THE COURT: All right.

16 (Government's Exhibit A received in
17 evidence.)

18 Q You did know there was a 17-foot spot right
19 outside the channel according to the charts?

20 A No, frankly I don't know. All I know is what
21 is on here.

22 THE COURT: He saw a figure 17 outside of the
23 channel which does not mean 17 feet; is that right?

24 THE WITNESS: Yes.

25 Q With that 17 mark you would not venture outside

1 mbrf

2 the channel at all?

3 A No, sir.

4 THE COURT: He says he wouldn't take his
5 tow, what was the draft?

6 THE WITNESS: 21 feet 6.

7 THE COURT: He wouldn't take a 21 foot draft over
8 the part of the river where it was marked a depth of 17
9 feet, is that right?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right.

12 Q If you had done that, would you say you had
13 made a mistake?

14 A Yes, sir.

15 Q How far away did you pass Buoy 34?

16 A 34?

17 Q Yes, sir.

18 A Well, over, I would say, in the neighborhood
19 of 200 feet, sir.

20 It sits 100 feet outside the channel, you know.

21 Q Let me ask you this question; and I am reading
22 from page 52 of your deposition, line 6:

23 "Q How far away from Buoy 34 did you pass?

24 "A Oh, 150, 200 feet."

25 A Yes, sir.

Q So it was no more than 200 feet?

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A Oh, I don't say. I said at least to my mind it was at least 150 to 200 feet.

Q And on what course were you at that time?

A I was on a swing at that time, sir.

Q Captain, did you not just testify that you went to course 355 when you were abeam the buoy?

A Yes, do you know how long it --

Q on 35?

A Yes, sir, but do you know how long it takes to swing that heavy, deep-loaded barge with a tug boat in the stern? You don't make an abrupt change of course like that, sir. You start your swing before you get to a -- you figure to be on the next course. This is a very heavy barge in the neighborhood of 10,000 tons.

Q You say as you were passing Buoy 34.

A Yes, sir.

Q You say you were on a swing?

A Yes, sir, I had started to make a swing to straighten her in the next reach. It is not that much after run there you know.

Q Had you entered into the bight?

A I would suppose the stern of the tug was into the bight at that time when you asked me about how far off I was.

1 mbrf
2 The stern of the tug now.

3 Q During that swing, the stern of the Judy Moran
4 was in the bight?

5 A Yes, sir, while the bow was up the channel
6 and headed up for 35, yes, sir.

7 Q Was it in the bight--let me finish the question--
8 as you were turning and passing Buoy 34, 150 to 200 feet
9 way, is that correct, or am I wrong?

10 A No, no, let's get that straight how we are doing
11 this.

12 As I approach 34 buoy, I am steering on a
13 course for the dike light, correct?

14 Q Yes. What course is that?

15 A That is about 5; as a base course you use 5;
16 correct?

17 Q Correct.

18 A Now, with this downbound vessel heading downbound
19 I could see his range lights and I have to get across
20 his range lights to make a safe passage, correct?

21 Q If you say so. Go ahead.

22 A And so I took the -- that's why instead of
23 shooting my normal course right for the -- that would take
24 me close at hand to the buoy where we are going to meet
25 I got to make the change of course prior to getting to

1
2 Buoy 35 so that he is on the reciprocal course of mine
3 going up.

4 Q You are sure that you had already changed to
5 course 355 and were on that line would have been Light
6 40 and Light 32?

7 A The only reason I can assure you that I was
8 changed was because I was across his range lights and
9 parallel to him on a reciprocal course.

10 MR. SCHULMEISTERS: Your Honor, may I finish
11 my question?

12 Q Are you sure that you were on course 355 and on
13 that line between Light 40 and Light 32 before you passed
14 the downbound vessel?

15 A I would say I was in the process and depending
16 on what he was, I was parallel to him.

17 Q Had you steadied?

18 A Sir?

9 Q Had you steadied on 355?

0 A If you said steady without the variance of
1 a degree or so, I couldn't be sure of that.

2 Q We will give you one degree variance, 355, 354,
3 356, but had you reached that course?

A I was on a steady course for passing him on this
355 because he was coming off that course on a 175 course.

1 mbrf

2 Q This is before passing?

3 A At passing.

4 Q Now, I can't tell you the precise moment that
5 I straightened out in the course.

6 Q Had you straightened out in 355 before passing?

7 A I was on a steady course when I passed him,
8 yes, sir.

9 Q How long had you been on a steady course before
10 passing?

11 A I really couldn't say. Perhaps 30 seconds,
12 perhaps a minute. A minute and a half. I couldn't say.

13 Q So as you were passing him you were navigating
14 with respect to two lights, 40 and 32?

15 A Mostly, sir, with respect to that 30 light astern
16 of me which is my guide not to get --

17 Q 30 or 32?

18 A 32, I'm sorry, Light 32 astern of me so I do
19 not get, and what I use on that is the flat side of
20 the stack, the Judy Moran is not -- the stack is not
21 oval, it has a flat surface on it. The wheelhouse
22 window you can look right down the flat surface that
23 I take to be parallel with the ship's keel. I mean
24 you wouldn't be off center. And I use that, and I could
25 see that the 32 light was still cracked, not much, but

1 mbrf

2 it was still outside of the flat of that tug to the
3 starboard side of the flat of that tug; of the smokestack.

4 Q And Light 40 was dead ahead of you?

5 A And Light 40, Light 40 was just cracked a
6 little bit on the starboard because I had the searchlight
7 on the black buoy up there. And that, and the reason
8 for that is that on passing him and making this turn,
9 you do make advance. How much I don't know in this
10 particular instance. As you make a turn with any
11 vessel you make advance, and the vessel tends to slide
12 slightly.

13 Q I know that you do make an advance, but you just
14 testified you had steadied down on that course before
15 passing.

16 A Yes.

17 Now I say the 355 course is a base course and
18 my contention is, sir, is that is what is the projected
19 course up there. Now, if I find myself slightly to one
20 side of a course or another I might steer a degree left
21 or right to compensate for it --

22 MR. SCHULMEISTERS: Your Honor, I move to strike
23 all this as not responsive to the question.

24 THE COURT: I don't know, I think it is responsive.
25 You fellows are talking high-powered navigation, I

1 think it is responsive. It isn't what happened on this
2 occasion. That is what you would do generally.

3
4 Q I am asking you particularly on this occasion
5 you had steadied on that base course 355 within a degree?

6 A Yes, sir.

7 Q With Light 40 up ahead and Light 32 behind you?

8 A Yes, yes.

9 Q Before passing?

10 A Yes, sir.

11 Q All right. And you continued on that course
12 and passed him?

13 A Yes, sir.

14 Q And so on that point you were navigating with
15 respect to those two lights?

16 A With respect to the one ahead, the one astern
17 and the position of that black can buoy on the port
18 bow. The searchlight was on the 39. Matthews Point.

19 Q Can we please mark that one if we don't have it
20 here already?

21 A That is this one.

22 Q Can we put a circle around that? I see, excuse
23 me.

24 THE COURT: I want to be clear, Captain. Were
25 you still on that course when you felt the bump?

1 mbrf

2 THE WITNESS: Yes, sir.

3 THE COURT: Still on that course?

4 THE WITNESS: Yes, sir I felt it was a safe
5 course.

6 THE COURT: You didn't change course between
7 the passing and the bump?

8 THE WITNESS: No, sir.

9 THE COURT: All right.

10 Q I hand you Exhibit 6 and would you please put
11 a circle around that black Buoy 39 and we will label it
12 then with a numerical 6.

13 A What did you want to have that marked, sir?

14 Q Put the number 6 next to it, please.

15 A (Witness marks chart.)

16 MR. SCHULMEISTERS: Your Honor, I would like
17 to mark for identification the Atlantic Coast Pilot
18 Volume 2.

19 THE COURT: What are you marking? What are
20 you going to use this for? Has he got any questions of
21 the Atlantic Coast?

22 THE WITNESS: That is the Coast Pilot for the
23 Hudson River.

24 MR. SCHULMEISTERS: It includes the Hudson
25 River, sir.

2 THE COURT: All right.

3 (Government's Exhibit B marked for
xx 4 identification.)

5 Q I show you page 240, sir, and is there a
6 statement in the Coast Pilot dealing with charts 283 and
7 284, that the bottom in the Hudson River is rocky north
8 of Kingston?

9 A Yes, that is correct.

10 Q Did you know that?

11 A I know most of the rock is in the Hudson River
12 but what I can't -- I know the west side of that river
13 is rocky right in this area, but what did I hit, rock or
14 did I hit a lighthouse? This is a thing that is bothering
15 me.

16 MR. SCHULMEISTERS: Move to strike that, your
17 Honor. I had a simple question.

18 THE COURT: All right. The book says that the
19 river is rocky north of Kingston. Is that right?

20 THE WITNESS: No, it is not completely right,
21 sir. There is many an area with mud, silt, sand.

22 THE COURT: There are other rocky areas?

23 THE WITNESS: Yes.

24 MR. WOLK: The book doesn't say that, your
25 Honor. Counsel has misrepresented the statement in the

1 mbrf

2 book.

3 MR. SCHULMEISTERS: I think the book will speak
4 for itself.

5 MR. ~~WOLK~~: Right.

6 Q Actually, I would like to put that into evidence.

7 THE COURT: Let's not get into that. What do
8 you say the book says?

9 MR. SCHULMEISTERS: It reads as follows, and
10 here is a copy, Mr. ~~Wolk~~: Charts 283, 284:

11 "In the Hudson River above Kingston many
12 shoals with depts less than 3 feet are in mid-river
13 or extend from the shore on either side. The bottom
14 is rocky at many of the bar crossings. Most of the
15 channels move in critical areas marked with lights and
16 buoys but ^{strings}~~strings~~ and all except small boats are
17 advised to take pilots. Pilots are engaged at New York."
18 That is the portion I would like to have.

19 THE COURT: All right.

20 Q As far as buoys are concerned, have you seen
21 any warning with respect to buoys that they may not be
22 exactly on the spot where they have been charted?

23 A Yes.

24 Q Where have you seen that?

25 A Oh, after a heavy blow, after a freshet in

the river.

Q Please listen to my question. I asked you have you seen such warnings?

A Yes.

Q Where have you seen them?

A In Notice to Mariners.

Q Anywhere else?

A In the various piloting and navigation books, I have read Bowditch.

Q Actually, the Atlantic Coast Pilot, Volume 2, also has such a statement?

A Yes, that is correct.

MR. SCHULMEISTERS: Without leading, your Honor, I would like to have permission to refer to it when we get to writing briefs with respect to matters in the Coast Pilot.

THE COURT: All right.

Q You also have a similar warning in the light list.

Let me show you a volume. Can you identify that?

A That is Light List No. 1 covering the upper Hudson River.

Q That is a 1973 volume?

A Yes, sir.

1 mbrf

2 Q The one that would have been applicable in
3 this year?

4 A Yes.

5 MR. SCHULMEISTERS: Again, your Honor, may
6 I mark it for identification, and have the right to refer
7 to any part in that document?

8 THE COURT: We will see what the other side has
9 to say about that.

10 MR. VOLK: I don't think it is necessary to
11 mark it, your Honor. I have no objection.

12 THE COURT: All right.

13 (Government's Exhibit C marked for
14 identification.)

15 MR. SCHULMEISTERS: Actually, I am interested
16 in two pages here, your Honor. I have Xerox copies
17 of those pages.

18 THE COURT: What pages are they?

19 MR. SCHULMEISTERS: One page is page XIV.
20 The other one is XII. And actually there is a third one,
21 page 272. Any objections, Mr. Volk, to these?

22 MR. VOLK: No.

23 THE COURT: All right, they may be received.
24 Call them C-1, 2, 3.

25 MR. WOLK: May I reserve the right to offer

1 mbrf

2 portions that may be pertinent if I need to?

3 THE COURT: Yes. I hope you won't, but you
4 have the right to reserve.

5 (Government's Exhibit C-1, 2 and 3 received

C1-2-3

6 in evidence.)

7 Q Now, Captain Maynard, in your years as a master
8 mariner and as a pilot, do you have to estimate distances,
9 sir?

10 A Yes, sir.

11 Q And that is something that you do every day?

12 A Yes.

13 THE COURT: Well, not every day, but when he piloted.

14 MR. SCHULMEISTERS: Whenever he piloted, right.

15 THE COURT: Yes, sure, all right.

16 Q As a deep-sea mariner, when you took your master's
17 license examination, did you have anything in there about
18 the importance of logbooks and entries in logbooks?

19 A Yes, sir.

20 Q They were supposed to be accurate?

21 A Yes, sir.

22 Q You do not make log entries later, do you?

23 A No, sir. I must qualify that.

24 MR. SCHULMEISTERS: Mr. Volk, may I please have
25 the logbook?

xx

1 mbrf

2 MR. WOLK: You cut him off again.

3 THE COURT: Go on with your comment.

4 A I do not consider that a proper seaman's
5 log?

6 Q You do not consider this a seaman's log.

7 A No, sir.

8 Q Therefore you can put anything in this Exhibit
9 1 freely and subsequently change it?

10 THE COURT: What is the distinction?

11 THE WITNESS: No, I say because this Moran
12 Towing Corp., they use this sort of a record on all
13 their harbor tugs and coast tugs here. We use this type
14 of logbook. On the coast we might make entries of
15 weather.

16 Now, there is very few if any of the tugboats
17 in this fleet with this type of a record book that --
18 in effect they have abandoned this, they have a worse
19 one now, but this one here, it does not reflect tides,
20 does not reflect courses, that a seaman would use. But
21 this is the nature of the business in Moran so this is
22 what I must use.

23 THE COURT: Is this a copy of a logbook that
24 you are required to keep?

25 THE WITNESS: Yes, sir, by the company, yes.

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THE COURT: By the company?

THE WITNESS: Yes.

THE COURT: But apart from the company --

THE WITNESS: There is no requirement.

THE COURT: No requirement of the Coast Guard
or the Army or the Navy? There isn't any requirement?

THE WITNESS: On a ship, on a vessel it would
be.

THE COURT: You are distinguishing this from
a deep-sea log?

THE WITNESS: Oh, yes, sir, there is no comparison.

THE COURT: That is the point you are making.
All right. But I take it really the point is when you
put anything in the log.

THE WITNESS: If I put an entry in the log, yes,
sir.

THE COURT: It was accurate as far as you could
tell at the time?

THE WITNESS: Yes, sir.

Q And at the time you made the entry with respect
to the grounding, you said you grounded 300 feet from
the Houghtaling Island Dike Light 36?

A Yes, sir.

Q That is the Light 36 we have been referring to?

1 mbrf

2 A Yes, sir.

3 Q With respect to Exhibit 36 which is the damage
4 report that you make, you also draw a diagram. Now,
5 on that diagram, is there an area which represents
6 Houghtaling Island?

7 A Yes. This would be it here, yes, sir.

8 Q Would you please take this red pen and go
9 over the area that represents Houghtaling Island?

10 A I am just going to make -- I see an error in
11 this thing. This is something I drew just with respect
12 to the numbers.

13 Q Would you please do what I asked you?

14 A Yes.

15 Q Then you can explain it afterwards?

16 A Yes, sir. I suspect this is as much of it as
17 you want.

18 Q Excuse me?

19 A I suspect this is as much as you want.

20 Q Certainly the red part represents Houghaling
21 Island, right?

22 A Yes, sir.

23 Q There is also a part that represents the dike?

24 A Yes, sir. This is the --

25 Q Would you please take the black pen and show

1 mbrf

2 us where the dike is?

3 A Yes, sir, that is the light in the dike and
4 this is the dike.

5 Q From the dike would you please draw a line
6 and label the dike?

7 A Yes, sir.

8 Q And then of course we have the width of the
9 channel over here which is supposed to be 400 feet, right?

10 A Yes.

11 Q And then you have a diagram of the Judy Moran,
12 and the Barge B#95.

13 A Yes, sir.

14 I note one thing that is rough in there.
15 There is some slight errors in there.

16 Q Does not this diagram show you being very close
17 to the dike light, sir, at least about the length of
18 the barge?

19 A Yes, sir, but -- that is correct, sir.

20 Q When you were drawing the diagram you tried to
21 make the best representation as to what occurred?

22 A Yes, that is correct.

23 Q And that corresponds with being approximately
24 300 feet from the dike light?

25 A That is what I estimated at the time that I

1 mbrf

2 filed the log, yes, sir.

3 Q Now here on Exhibit 4, the report of the Coast
4 Guard you also said that there, the accident occurred
5 300 feet --

6 A That is correct.

7 Q -- below the dike?

8 A Yes, sir.

9 Q Let me hand to you Exhibit 3, which is your
10 ship's chart, right?

11 A Yes, sir.

12 Q Incidentally, as you were making up the report,
13 Exhibit 36, you were referring to the chart, or did
14 you do it from memory?

15 A No, I didn't refer to the chart. I referred
16 to the entry in the logbook that I estimated 300 feet,
17 and I put that in the logbook, yes, sir.

18 Q Would you please measure the distance, 300 feet
19 from the dike light, and let me hand you a pencil,
20 please, and please mark that on Exhibit 3.

21 Here is a pencil, will you please mark that
22 area?

23 A Yes, sir.

24 Before I mark the area, I would like to circle
25 this. This is my original mark as to the Coast Guard

where I pointed to the Coast Guard, and I marked this area.

Q Would you please --

MR. VOLK: Wait a minute.

A I don't want to obliterate or get anything fouled up.

Q In that case maybe we better do it on the other chart.

A Right.

Q I would have no objection.

Now mark the spot 300 feet from the dike on Exhibit 6, please.

A (Witness marked chart.)

Q Now, Captain, would you please measure the distance on Exhibit 3, and you have the dividers there, from the dike light to the position that you showed to the Coast Guard as you say.

Let me rephrase that. The position you said you showed to the Coast Guard.

Are you taking the bottom or top?

A The middle of it.

Q The middle of that black mark?

A Yes.

Q All right.

A And that would be approximately a little short

1 mbrf
2 of 900 feet.

3 Q 900 feet?

4 A Yes, sir.

5 Q However, in your written report to the Coast
6 Guard you mentioned 300 feet?

7 A Yes, sir.

8 I said approximately, I believe, didn't I?

9 Q Approximately does not mean three times as much,
10 does it?

11 A Like I say I wrote approximately. I did not
12 measure it off the chart. I showed the particular area
13 to the Coast Guard where I did. I didn't pick it off.
14 When I wrote that in the logbook it was written at the
15 moment I hit and what I estimated the distance to be
16 or subsequent after my stopping engines and doing this
17 and doing that I made an entry in the logbook and I
18 looked up and I saw the light and I said we are about
19 300 feet south of the light is where I hit.

20 Q Incidentally, you mentioned there was ebb tide,
21 I think, right?

22 A Yes.

23 Q And the speed of that was what?

24 A Oh, I think, in the neighborhood of a half,
25 three quarters of a knot, somewhere in there. I don't

1 mbrf

2 think any more.

3 Q Did you not previously testify three-quarters
4 to one knot?

5 A Perhaps so. I will say half to one knot, and
6 I won't equivocate.

7 Q You would say one-half to one knot?

8 A Yes.

9 Q And of course the visibility was?

10 A Excellent.

11 Q Excellent.

12 A Yes, sir.

13 Q With respect to the radar you said your mate was
14 standing by the radar?

15 A Yes, sir.

16 Q Did you say the mate was plotting courses or
17 something on that?

18 A No, he was comparing his radar position, the
19 terms and everything, with the chart, with the points
20 I was pointing out to him, what we were steering by.
21 He could compare on the radar to his position in the
22 river with regard to buoys and shoreline. In other
23 words, familiarizing himself with the river.

24 Q Did he give you any positions?

25 A No, sir.

1 mbrf

2 Q And he made no comments to you whatsoever as
3 to where you were in the river, right?

4 A No, sir, he might have -- we might have exchanged
5 comments as to where the turn was or where he thought
6 he was or what I was going to do. I can't remember
7 the conversation carried on between us. Q On page 27, line
8 23, were you asked this question, did you give this
9 answer:

10 Q Did the mate give you any reports prior to the
11 stranding?

12 "A No."

13 A No, no, he didn't give me any reports, no, sir.
14 I say that but as far as conversation I can't remember
15 what went on.

16 Q What scales did your radar have?

17 A We have half-mile, three-quarter mile, mile
18 and a half, three miles. And further up.

19 Q And further up?

20 A Yes, sir.

21 THE COURT: I think we are going to adjourn right
22 now until 10:00 o'clock tomorrow morning.

23 (Adjourned to October 6, 1976, at 10:00 a.m.)
24
25

2 Bouchard Transportation Co., et al.

3 vs

74 Civ. 325

4 Moran Towing & Transportation Co., et al

7 New York, New York
8 October 6, 1976-10:00 a.m.

9 (Trial continued)

10 THE COURT: Good morning.

11 Captain Maynard was on the stand yesterday,
12 I believe.

13 ROBERT MAYNARD, resumed the stand
14 and testified further as follows:

15 THE COURT: You may proceed, Mr. Schulmeisters.

16 CROSS EXAMINATION

17 BY MR. SCHULMEISTERS: (Continued)

18 Q Captain, just as we were breaking up last
19 night I was asking you about your radar. The tug did
20 have an excellent radar, did she not?

21 A Yes, sir.

22 Q Radar is something that would show you fixed
23 lights, surrounding land, buoys, things like that?

24 A Yes, sir.

25 Q The Judy Moran's radar could pick things like

1 lzrf

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2 that up?

3 A Yes, sir.

4 Q So if you had looked at the radar, you would
5 have seen the relationship, say of the dike light to the
6 position of your vessel?

7 A Yes, sir.

8 Q And you would have seen the position of Light
9 32 in relation to your vessel?

10 A Yes, sir, but --

11 Q Thank you.

12 MR. VOLK: He cut him off. I think the witness
13 should be allowed --

14 THE COURT: As I understand, by looking at the
15 radar you could determine the relative position of these
16 lights, is that correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: That is what he wants.

19 MR. VOLK: I thought he wanted to explain some-
20 thing --

21 THE COURT: That is all right. You can get a
22 chance on redirect.

23 Q And also you could see the buoy in the river
24 on the radar?

25 A Yes, sir.

Q And of course, if you reduce your scale, say to about two miles --

A A mile and a half.

Q A mile and a half, you really have a fairly large picture.

A Yes, sir.

Q And you do have a cursor on it?

A Yes, sir.

Q What is that?

A That is a part of the equipment that you can variously rotate around to get a bearing, to get a parallelism off of a particular object.

Q And did your radar also have a heading flasher?

A Yes, sir.

Q What is a heading flasher?

A That is an automatic device that shows you the constant heading of the tugboard, the bow heading of the tugboat. Sometimes a relative heading which we use primarily. Sometimes on some of the sets it uses a true motion heading which indicates the actual geographic heading.

Q Generally, it would show the direction in which you are proceeding?

A That is correct.

1 lzrf

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2 Q You also had a gyro?

3 A Yes, sir.

4 THE COURT: Had a what?

5 MR. SCHULMEISTERS: Gyro.

6 Q The gyro didn't have any error?

7 A I must qualify that, sir. This particular type
8 gyro we had, we found an idiosyncrasy with it so to
9 speak that as you make a turn with it, it never did settle
10 down to a true heading for several minutes or even longer
11 after we were on that true heading. It seemed to be
12 an idiosyncrasy of that particular make of gyro. It
13 was an Italian make, a new make. If you steadied down
14 on it long enough, yes, it was true and you got a proper
15 heading.

16 THE COURT: Is what you are saying that this
17 particular gyro took a period of time to adjust?

18 THE WITNESS: To settle down to a proper heading.

19 THE COURT: To adjust to a proper heading.

20 THE WITNESS: That's right.

21 Q On every turn of the vessel?

22 A Yes, sir.

23 Q You said you have sailed deep sea, right?

24 A Yes, sir.

25 Q Have you ever seen a gyro on a vessel that would

1 lzrf

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2 not keep to the true north as the vessel turns?

3 A Wait a minute, sir. You mean the master gyro,
4 yes, of course that always points to the true north.

5 Q That is the purpose of the gyro?

6 A That is correct, but there are gyros that
7 malfunction, too. There are gyro compasses that malfunction
8 that have errors in them for various reasons.

9 Q So the failure of the gyro to settle, as you
10 make a turn, is a malfunctioning of the gyro?

11 A No, to my mind what they claim is not a mal-
12 function in this particular type of gyro. It just seemed,
13 it is an Italian make gyro. It is the first one I have
14 ever been shipmates with and it just seemed to be an
15 idiosyncrasy of it. We have two of that class boats
16 operating here and both of them did the same thing.

17 Q By the way, getting back to, for a minute, to
18 what we talked about yesterday, and your passing of Buoy
19 34. Let me read you this from your deposition, page
20 52.

21 MR. SCHULMEISTERS: Mr. Volk, would you like
22 to look at it?

23 A I remember it. It was 150 to 200 feet. That
24 was my estimation, yes, sir.

25 Q I asked you about how far you passed Buoy 34

and your deposition testimony was 150 to 200 feet.

Continuing on line 8, page 52:

"Q That was on your starboard side?

"A Yes.

"Q On what course were you then?

"A The 005."

There is a continuation of the answer.

MR. SCHULMEISTERS: I think at this point, your Honor, that is not relevant.

THE COURT: I can't hear you so talk slowly, would you?

Q Maybe I better read the whole answer. I will repeat it.

"Q On what course were you then?

"A 005. I will not put Mr. Volk in a bind. I wouldn't say I wasn't steering to the right, judging this vessel coming down, but I was watching his position with regard to the -- to that buoy here and estimating he was close to the buoy so he wasn't taking any part of the channel away from me. In other words, as to whether I was on ⁰⁰⁵~~225~~ course completely up there I will not vouch. I will be honest with you.

"Q About how much of a difference would there have been?

1 lzrf

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2 "A A couple of degrees. I am this way too. I
3 will never let another man have more than his share
4 of the channel.

5 "Q You say you could have been about 2 or 3
6 degrees further to the right?

7 "A That is correct."

8 Were these questions asked of you and did you
9 give those answers?

10 A Yes, sir.

11 MR. SCHULMEISTERS: Now, Mr. Volk, will you
12 please turn to page 46 starting at line 18:

13 "Q What course were you on --"

14 MR. VOLK: Your Honor, may I object, there has
15 been no foundation laid for ^{READING THIS DEPOSITION} ~~reading~~ -- Is he trying to
16 develop an ^{INCONSISTENCY?} ~~intent~~?

17 THE COURT: I don't know that but if it isn't
18 too much I will let him read that question. I suppose
19 that is what you are trying to develop.

20 MR. SCHULMEISTERS: Yesterday he testified
21 as he was passing Buoy 34 he was turning.

22 THE COURT: Okay. You can do it that way.

23 Q "Q What course were you on at the time you
24 passed Buoy 35 marked C on the exhibit--" and that
25 is on a chart that was marked during the examination

1 lzrf

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2 before trial, your Honor, but I think we don't need
3 it since we have Buoy 35 --

4 THE COURT: No comment.

5 Just read the questions.

6 "A I was steering approximately a course of 005
7 here.

8 "Q Yes?

9 "A For what I tried to steer was a course of 005.
10 If I am not coming here I will adjust it but the course
11 is 005 and what I use from this particular buoy here, I
12 change a course and steer for this dike light."

13 Were those questions asked and did you give
14 those answers?

15 A I am a little confused here now as to where
16 and what buoy and to what --

17 THE COURT: The question is whether you recall
18 giving that answer --

19 A As far as that testimony, what is in there,
20 yes, sir.

21 MR. VOLK: Your Honor, I object. They are
22 taken completely out of context.

23 THE COURT: All I have gotten is he says he
24 has given the answers to those questions.

25 THE WITNESS: I did answer those questions.

1 lzrf

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2 Q The question there was on what course you
3 were when you were passing Buoy 35 and your answer was
4 that you were steering a course of 005 is that correct,
5 sir?

6 A If it is in that book it is correct, sir.

7 Q Just to make sure, sir, will you look at it,
8 page 46. And that is the answer that you gave, lines
9 18 to 20.

10 A I must say, this is --

11 THE COURT: The question is did you give that
12 answer.

13 THE WITNESS: Yes, sir. I would have to say I
14 did, yes, sir.

15 THE COURT: All right.

16 THE WITNESS: This is what I'm trying to find
17 out, sir, this number 30, I am getting confused as to
18 buoys and --

19 THE COURT: Your lawyer will straighten you
20 out on that. The point is here did you make the answer
21 to the questions.

22 Q On page 47 you were asked these questions and
23 gave these answers, starting line 7:

24 "Q And then you steered for the dike light?

25 "A Yes, until I am abeam of this buoy.

1 lzrf

2 "Q The dike light is Light 36, is that correct?

3 "A That is correct.

4 "Q And until you are abeam of this buoy, you mean
5 Buoy 35?

6 "A Yes, that is correct."

7 Were you asked those questions and did you give
8 those answers?

9 A I gave those answers there but I can't --

10 THE COURT: That is all you need to do now.
11 You gave those answers, all right.

12 Q Further on line 21:

13 "Q Once you are abeam of Buoy 35 what course did
14 you then steer?

15 "A I steered right up to Houghtaling Island Light
16 pier, which would be a course of 355 or 354, somewhere
17 in the neighborhood."

18 Then on 48, starting line 10:

19 "Q Which is Light No. 40, is that correct?

20 "A Yes, and that should leave Stuyvesant Light
21 here under my stern.

22 "Q Stuyvesant Light is No. 32?

23 "A Yes, that is correct."

24 Were you asked those questions and did you give
25 those answers?

1 1zrf

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2 A Yes, sir.

3 Q And did you give an estimate during your prior
4 testimony how far the Morania --5 THE COURT: Wait a minute. I don't like that
6 question.7 MR. SCHULMEISTERS: It starts on page 65.
8 Let me withdraw that, your Honor. I will go on to something
9 else.10 THE COURT: I think then I would keep off the
11 deposition and ask him whether he did estimate it.12 Q Did you estimate the distance that the Morania 300
13 passed Buoy 35?

14 A Yes, sir.

15 Q What --

16 A Wait. I estimated the distance she would be
17 passing off and her approach. All I had was her approach
18 to the buoy from the north and mine from the south and
19 looking at the relationship of her to the buoy.20 Q Actually you did not see how close she passed
21 because when she passed, she obscured the light?

22 A That is correct.

23 Q Yesterday I think you testified that you took
24 over the conning or navigation of the flotilla at
25 Verrazano Bridge, is that correct?

1 lzrf

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2 I believe.

3 Q Well, at least until 1966 you were doing New
4 York Harbor and outside, right?

5 A Oh, no, you got to go back to about 1948 when
6 I actually started the coastwise --

7 Q Captain, what I am driving at is, you were not
8 taking vessels up and down the Hudson River until '66.

9 A You are wrong there. It was in 1948. Like I say
10 I went roustabout. I went with my father in 1936 or
11 '37, I can't remember which one. The first time you
12 asked me.

13 Q The channel has changed since 1937?

14 A Oh, yes, it has changed in the last few years.
15 I went up and down steady for Bushey in 1948, '49 and
16 part of '50.

17 Q The channel has changed since that time, too,
18 has it not?

19 A Yes, it has.

20 Q Captain, by the way, you mentioned it was ebb tide.

21 A Yes, sir.

22 Q Did you figure out how high the tide was?

23 A No, sir.

24 Q Did that play any part in your navigation?

25 A No, sir.

1 1zrf

Maynard-cross

112

2 Q And which is the Upper Bronk Light?

3 A That is No. 27. No, that is Lower Bronk. No.

4 31 is Upper Bronk.

5 Q 31?

6 A 31 is Upper Bronk, yes.

7 Q You mentioned that you blew no whistle signals
8 as you were passing the Morania 300?

9 A That is correct.

10 Q You mentioned you flashed a light?

11 A I mentioned that he flashed first and I flashed
12 second, to the best of my memory. If he flashed, I flashed.
13 But we did --

14 Q Did he flash or was he looking for buoys?

15 A No, that is a distinct difference.

16 Q By the way, to pass your various deep-sea licenses
17 do you need to know the Rules of the Road?

18 A Yes, I do.

19 Q Do you know of any Rule of the Road, either
20 statutory or the regulations, that permits you to use
21 lights to reach passing agreements?

22 THE COURT: You mean lights in lieu of a whistle?

23 Q Instead of the whistle.

24 A You asked me if there is a rule but I must qualify
25 that.

1 lzrf

2 never get any sleep.

3 THE COURT: All you are telling me is it is
4 a common practice and the light signals are just as
5 effective?

6 THE WITNESS: That is correct.

7 THE COURT: And there is no need to blow the
8 whistle?

9 THE WITNESS: That is correct.

10 THE COURT: All right, and the same thing would
11 have happened here if you had blown the whistles or
12 used the light. You would have been in a port to port
13 passing in either event?

14 THE WITNESS: That's right, because we had
15 conversed earlier and agreed to that by radio communication.

16 THE COURT: Okay.

17 Q You say you often use the VHF when you go up
18 and down --

19 A Yes, sir.

20 Q Have you ever in your navigating practice talked
21 to another vessel and agreed on a place where you would
22 pass?

23 A That is correct, sir.

24 Q And that may involve one fellow holding back
25 a little bit until the other fellow gets down?

1 lzrf

Maynard-cross

115

2 A That is correct.

3 Q Would you say it is easier to pass in the
4 straightaway?

5 A Depending on the size of the vessels, yes, sir.

6 Q Would you have held back in Stuyvesant Anchorage
7 and then passed on the straightaway?8 A If I knew that danger existed I damn well would
9 have.10 Q You say that danger existed. Are you referring
11 to the 17-foot sounding outside of the channel?12 A No, sir. I am talking about that abandoned
13 lighthouse.

14 Q About what?

15 A The abandoned lighthouse.

16 Q What abandoned lighthouse?

17 A Bug Island Lighthouse I have been informed it
18 was formerly called.

19 Q You have been informed?

20 A Yes, sir.

21 Q By whom?

22 A The Army Engineers. You said Army Engineers.

23 Q When did they tell you that?

24 A When we were conducting the survey.

25 Q Who in particular told you that?

1

2

THE COURT: If you remember.

3

A The chap that was in charge of the boat I was in.

4

THE COURT: You don't remember his name?

5

THE WITNESS: I don't, sir.

6

THE COURT: All right.

7

O Where was that, was that in the channel?

8

A To my mind yes, sir.

9

O To your mind it was in the channel?

10

A Yes, sir.

11

Q Mr. Volk asked you some questions about Exhibit 7.

12

Does that show anything in the channel, sir?

13

A No, sir, but I didn't have that chart.

14

Might I ask you a question, sir?

15

O No. Unless the Court allows it.

16

A Well, you are establishing a channel and I

17

really don't -- I wish you would define the edge of

18

this channel for me.

19

THE COURT: He is not going to define the edge

20

of the channel. You answer the questions and you

21

will get some help on redirect.

22

Q You mentioned that the Army Engineers have some

23

charts you did not get. What charts are you referring to?

24

A From what I understand, those particular type

25

of charts there, where they have conducted surveys, they

1 mbrf

2 have a record of the length of the river as I understand it.

3 Q Did you ever ask the Army Engineers for any
4 such charts or any survey?

5 A We are governed -- no, did I personally,
6 no. No, sir.

7 Q Was there anything to prevent you from going
8 and asking the Army Engineers for any chart that you thought
9 was necessary?

10 A No, sir.

11 Q Incidentally, steering from, say Buoy 30 to
12 Light 36 and then steering in such a way that you have
13 Light 40 ahead and Light 32 behind you, they are what you
14 call your personal ranges, are they not?

15 A They are the only information I can glean that
16 will give me an idea of where that channel exists
17 with the exception of 35 buoy and 39 which marked the
18 western edge of the channel.

19 Q On page 97, these are some questions by Mr.
20 Volk, starting on line 4. The question:

21 "Q You say you had a chart 284 and a tug?

22 "A Yes.

23 "Q On that night?

24 "A Yes.

25 "Q Where was it physically?

1 "A On the chart table.

2 "Q Were you using the chart to navigate by?

3 "A I myself at the moment wasn't using it when
4 this happened. I keep it there for reference but the
5 mate was a new man on the river and he was logging by
6 radar and by visual sights and I was describing what
7 I knew to be the dangers in the river courses to
8 steering. My own personal ranges for steering."
9

10 Did you give those answers to those questions?

11 A Yes, I did.

12 MR. SCHULMEISTERS: Thank you. No further
13 questions.

14 REDIRECT EXAMINATION

15 BY MR. ~~V~~OLK:

16 Q Captain, in answer to Mr. Schulmeisters' questions,
17 you mentioned several compass courses.

18 A Yes, sir.

19 Q The first one was 018?

20 A Yes, sir.

21 Q And I think the next one was 005?

22 A Yes, sir.

23 Q And I think the next one was 355 or 354?

24 A That is correct.

25 Q Were you steering by compass on this occasion?

mbrf

Maynard- redirect

119

1
2 A No, sir.

3 Q When you mentioned these courses, what do you
4 mean by them?

5 A As Mr. Schulmeisters first asked me of whether
6 I preplotted courses up and down the Hudson River.
7 I did that on my other voyages or until I became that
8 familiar with the river that I don't plot on every chart
9 I have any more. I am familiar enough with the river.

0 Those courses that I gave you were determined
1 as the course of the channel itself as it is laid out
2 on this chart.

3 Q And the course in the channel changes from 005
4 to 355 at Buoy 35, is that correct?

5 A It changes from 005 to 355 at the channel.

6 Q At Buoy 35?

7 A That is correct.

8 Q That doesn't necessarily mean that the vessel
9 you are actually steering changes at that point, does it?

10 A No, sir. If I might explain, your Honor. Mr.
11 Schulmeisters brought in Buoy 34, which I never turn
12 on 34 because it sits 100 feet out of the channel and
13 if I depend too much on that buoy I could get over on
14 that shore and I know of this.

15 I know that Buoy 38 sits 50 feet outside

1 lzrf

Maynard-redirect

120

2 of the channel. There is no actual demarkation line
3 visible to a navigator or a pilot going up that river
4 as the west side is. The west side is covered by Buoy
5 35 and 39. They sit on the channel edge and mark the
6 western edge of that channel.

7 THE COURT: What you are saying is that the
8 buoys on the western side of the channel mark the channel
9 whereas on the eastern side you say that you don't get
10 too near them because they are east of the channel?

11 THE WITNESS: That is correct, sir. And I
12 use that buoy, that Light 32 down there from -- when
13 I laid out my original course I used that to guide me
14 up the channel and to keep it on the starboard quarter,
15 at any rate, don't let it go across the stern of the
16 vessel which would indicate -- that is the only way I
17 could determine the eastern side of that channel, to protect
18 myself from the eastern side of that channel.

19 Q Is there any buoy located on the easterly side
20 of the channel itself as a reference?

21 A No, sir.

22 Q Getting back to my original question, these compass
23 courses which you have given are the base courses, is
24 that right?

25 A That is correct.

Q And they are not necessarily the courses that

1 1zrf

Maynard-redirect

121

2 you actually steer when you are navigating?

3 A That is correct.

4 Q The courses that you steer when you are navigating
5 are dependent upon the circumstances at the time?

6 A My visual --

7 MR. SCHULMEISTERS: This is leading, your Honor.

8 THE COURT: Yes. I think I will sustain the
9 objection to that question.

10 Captain, tell us again, this particular night,
11 I think you said something about you really steered
12 visually, is that right?

13 THE WITNESS: Yes, sir. Piloting is actually
14 steering visually.

15 THE COURT: What do you mean when you were
16 steering visually, does that mean you were taking one
17 reference point after another that you could see, is that
18 correct?

19 THE WITNESS: That is correct.

20 THE COURT: Tell us again what the reference
21 points you say you were looking at on this particular
22 voyage from the time you saw this other vessel until
23 the time you hit this obstruction?

24 THE WITNESS: My first course as I was coming up
25 Stuyvesant Reach, I used Buoy 30. I engaged myself mid-

1 1zrf

Maynard-redirect

122

2 channel and I shaped my course normally and this is
3 where the --

4 THE COURT: Don't get normally. Tell us
5 what you did that night.

6 THE WITNESS: On this particular night my
7 next course would be 005.

8 THE COURT: You said that you were doing this
9 visually. You didn't look at your compass?

10 THE WITNESS: No, sir.

11 THE COURT: Tell us what you did visually.
12 That is what I am interested in.

13 THE WITNESS: Visually I know I have to bear
14 to the left. I noted Buoy 35. I also noted the vessel
15 coming downbound. I watch his range lights and I go
16 into that bight, as I explained yesterday, to get my
17 vessel shaped around on that next course and to meet
18 him on a parallel course which would be the 355, between
19 the 005 and the 355. In other words, I don't want to
20 be in the swing --

21 THE COURT: Don't tell us what you didn't want
22 to be. You say you were navigating visually.

23 THE WITNESS: Yes, sir.

24 THE COURT: What I am interested in is what
25 points of reference you were using in navigating visually.

1 lzrf

Maynard-redirect

123

2 What did you look at?

3 THE WITNESS: That 35 buoy, sir. The dike
4 light ahead. The 34 buoy. And when you did get around
5 to that next course I used for safety light No. 32 and
6 the Houghtaling Light No. 40 ahead with the Light 32
7 astern to make sure it was on my starboard side to
8 protect me from that eastern edge of the channel.

9 THE COURT: Your point is you visually observed
10 these lights and your course was based on the angles --

11 THE WITNESS: Yes, sir, on the continuous
12 movement of the vessel. This was a heavy tow, sir. It
13 is 400 some odd feet long. It is not like a motorboard
14 or a light tug where you can make a quick change. You
15 have to go into it gradually.

16 Q Yesterday, on the chart in front of you, Exhibit
17 3, you drew a little line which you called a bight.

18 A Yes, sir.

19 Q When you are in that bight, it is off I think
20 between Buoys 30 and 34, what aids do you rely on in your
21 navigation?

22 A Primarily that Light 32 --

23 THE COURT: That is getting too general. What
24 did you do that night?

25 Q What aids did you rely on?

1 lzrf

Maynard-redirect

124

2 A Light 32 and Light 40 in that bight to make that
3 turn and that corner green buoy flashing to gauge the
4 channel from that.

5 Q What number is that corner green buoy?

6 A 35, sir.

7 Q 35?

8 A Yes, sir.

9 Q Is that the buoy that you later found out was
10 off station?

11 A Yes, sir.

12 Q And you were relying on it?

13 A Yes, sir.

14 Q After you get up abeam of Buoy 35, what aids do
15 you rely on?

16 THE COURT: What did you --

17 Q What did you rely on, excuse me.

18 A I was using Light 40 on Houghtaling Island. I
19 was using that Light 32 at Stuyvesant to protect the
20 starboard side. I had my searchlight on the No. 39 buoy
21 and could visually see the New Baltimore Range in line
22 with it, which indicated in my mind from this particular
23 chart that I was in the channel.

24 Q You have described this as personal range, that
25 is, the line between Light 40 ahead and Light 32 astern?

1 1zrf

Maynard-redirect

125

2 A Yes, sir.

3 Q And plotting it on the chart, I think you said,
4 gives a line which falls in the channel?

5 A That is correct, sir.

6 Q In order to use that range, is it necessary
7 for you to keep looking ahead and astern?

8 A Yes, sir.

9 Q And to estimate whether or not your vessel
10 is on that line?

11 A Yes, sir.

12 Q Is that as accurate as a range of two lights
13 in a row?

14 A No, sir.

15 Q Is there room for error in using the type of
16 personal range which you used, that is, Light 40 ahead
17 and Light 32 astern?

18 MR. SCHULMEISTERS: Objection, leading.

19 Q Is there room for error?

20 THE COURT: I will let him answer that.

21 A Yes, there is room. A single light ahead or a
22 single light astern, yes, there is room. It is a judgment.

23 Q Could you estimate what kind of error you
24 might expect --

25 THE COURT: Wait a minute on that. I think I

1 lzrf

Maynard-redirect

126

2 will leave it that there is an error because you get
3 into this estimating and I am still only interested
4 in this voyage.

5 All you are saying is there could be error.

6 THE WITNESS: Yes, sir. In my mind there was
7 none but there could be, yes, sir.

8 Q It was the only range available to you, is
9 that correct?

10 A That is the only marks I had available. That
11 is correct.

12 Q There is nothing else to mark the eastern edge
13 of the channel is there?

14 A No, sir.

15 Q Could the error of using your personal range
16 be as much as 50 feet?

17 MR. SCHULMEISTERS: Objection.

18 THE COURT: Again, I don't want to get into
19 speculation. I think I will leave it that there
20 could be error and not go any further than that.

21 Q I show you Exhibit 7. Is this what you mean
22 when you say an Army Engineers chart?

23 A I know from hearsay. I have never seen it.
24 I have understood that since this case happened and
25 I have been going into -- trying to get information,

1 l2rf

Maynard-redirect

123

2 Q Is the high spot which is marked in red there,
3 the other one, is that shown on navigation chart 44
4 which you had that night?

5 This point which I am talking about here, this
6 point here. Was that shown on that navigation --

7 A Not as a rock or anything or a high peak. You
8 see, these soundings do not at all correspond to what
9 is on this chart here.

10 Q You are referring to chart 284?

11 A That is correct.

12 Q Now, the 17-foot spot on the navigation chart,
13 that is 284, Exhibit 3, doesn't indicate what kind of
14 bottom it is, does it?

15 A No, sir.

16 Q If that 17-foot spot as shown on the chart had
17 indicated that it was a rock --

18 MR. SCHULMEISTERS: Objection. Leading, your
19 Honor.

20 THE COURT: Let me see what the question is.

21 Q Suppose it had indicated that it was a rock
22 instead of just a 17-foot spot without any explanation --

23 THE COURT: Oh, I will sustain the objection to
24 that. I think the captain has already testified --
25 Captain, if you had a chart that indicate a 17-foot

1 lzrf

Maynard-redirect

129

2 depth and you had a tow where the draft was 21 feet,
3 it doesn't matter what the chart said, you wouldn't go
4 in there, would you?

5 THE WITNESS: I must qualify that, sir.

6 THE COURT: You would? I don't know why. You
7 would qualify that. You would take a 21-foot draft into
8 part of the river which, according to the chart, indicates
9 a depth of 17 feet.

10 THE WITNESS: No, there are certain times, for
11 instance, where we are forced to move out of the channel
12 with a barge and a soft bottom to let a big ship by,
13 we will drop in until we feel a touch or stay there
14 as far as we can.

15 THE COURT: Four feet difference?

16 THE WITNESS: Whatever the draft of the barge
17 will permit.

18 THE COURT: A loaded oil barge.

19 THE WITNESS: Yes, sir. We drift her in there --
20 I am not saying we are going to run her in there. We
21 let her sag in to get out of the way of a big ship.
22 We have dropped out of the channel and sometimes the
23 chart would show 15 feet and we are in there with a
24 22-foot barge and we are not touching. What we do,
25 we just let her sag in the same as you would land her

1 lzrf

Maynard-redirect

130

2 alongside of the dock. You would just lay there.

3 If she would go in further, you would get out of the
4 channel and give the ship all the room it could handle.
5 If it were a rock, no.

6 THE COURT: If the chart said 17 feet, the
7 chart of the Hudson -- does that one say this is rock
8 or this is mud?

9 THE WITNESS: Not on this particular occasion,
10 sir. On this particular occasion I was full speed
11 ahead so I wouldn't go in there.

12 THE COURT: I wouldn't think so. Okay.

13 Q My question really was, does the type of danger
14 affect your navigation as shown on the chart? I
15 think that is a fair question.

16 THE COURT: I'm not sure -- it may be a fair
17 question. I'm not clear what it means. Are you suggesting
18 to the captain that if he could just see 17 feet as
19 the depth, that then that doesn't mean anything, you have
20 to show 17 feet rock or something like that.

21 MR. VOLK: Well, your Honor, if it didn't --
22 if there were a distinction, certainly the people who
23 make these charts wouldn't have -- they have a whole
24 book of kinds of symbols, if they all meant the same thing
25 they wouldn't have to have all these symbols.

1 lzrf

Maynard-recross

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2 A No, I couldn't use it on a dike light.

3 Q Does Buoy 35 show you how far you are over to
4 the right in the channel?

5 A Yes, sir.

6 Q Do not the light lists on the Coast Pilot tell
7 you that buoys are subject to moving?

8 A I am also under the impression that they supposedly
9 are in the right position too.

10 MR. SCHULMEISTERS: I move to strike that answer.
11 I would like an answer to my question, your Honor.

12 THE COURT: Repeat the question.

13 Q Are you not warned by the light lists and --

14 THE COURT: Wait a minute. It is awfully confusing
15 to me.

16 Q The question is are you not warned by the light
17 list, that is Exhibit C-1, your Honor, the light list,
18 and the Coast Pilot and Bowditch, not to rely on buoys
19 as they do move?

20 A It also gives a reason --

21 THE COURT: The question is are you warned.
22 Are you warned?

23 THE WITNESS: Yes, but --

24 THE COURT: Yes, okay.

25 THE WITNESS: He didn't ask the rest of it.

1 1zrf

Maynard-recross

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2 THE COURT: You will get a chance on that.
3 You are warned.

4 THE WITNESS: Yes, sir.

5 Q And danger angles and danger bearing as shown
6 in Bowditch refer to fixed objects, is that correct?

7 A That is correct.

8 MR. SCHULMEISTERS: That is all I have, your
9 Honor.

10 FURTHER REDIRECT EXAMINATION

11 BY MR. VOLK:

12 Q You may finish your answer now, Captain,
13 concerning the buoys.

14 A They warn you that these buoys are subject to
15 being off station due to ice conditions, due to flooding
16 of the river, due to storms. At this particular time
17 of the year in the Hudson River I had every right to
18 expect that buoy to be on station. It was in the late
19 fall. There was no floodings. There was no ice --

20 THE COURT: What was the date of the chart?

21 THE WITNESS: The chart I had was up to date --

22 MR. VOLK: August 11, 1973.

23 THE COURT: August 11, '73.

24 THE WITNESS: Yes, sir. On previous voyages
25 they always seemed to be on station.

1 1zrf

Maynard-redirect

140

2 THE COURT: How often do they put out these
3 charts?

4 THE WITNESS: When they make a major change
5 in the river, perhaps every two years, three years.
6 Depending on that.

7 THE COURT: That is a '73 chart?

8 THE WITNESS: Yes, sir.

9 FURTHER RECROSS EXAMINATION

10 BY MR. SCHULMEISTERS:

11 Q The warning also includes collision with buoys,
12 right?

13 You mentioned ice storms.

14 A Yes, that is correct.

15 THE COURT: I would think so.

16 All right, I take it these are all the questions,
17 Captain, and thank you.

18 You are excused.

19 (Witness excused.)

20 THE COURT: We will take a short recess.

21 (Recess.)

22 MR. VOLK: I call Captain Aitken.

23 J O H N A I T K E N, called as a witness by
24 Plaintiff Moran, being first duly sworn testified
25 as follows:

1 lzrf

Aitken-direct

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2 DIRECT EXAMINATION

3 BY MR. VOLK:

4 Q Captain Aitken, what is your profession, sir?

5 A I am a first-class pilot for the Hudson River,
6 any gross tons. I am a master coastwise. I have a
7 second mate's license, seaman motor vessels any gross
8 tons for oceans and I am a first-class pilot with
9 endorsements on my license for most of the large seaports
10 on the coast of the United States.

11 Q How long have you been going to sea, sir?

12 A 49 years.

13 Q When did you first obtain a master license?

14 A In 1939.

15 Q When did you first have occasion to sail up
16 the Hudson River?

17 A 1936, 1937.

18 Q Have you had any experience deep-sea?

19 A Yes, sir, I have. I was commanding officer of
20 Naval vessels during World War II and during the Korean
21 War.

22 Q Have you had any experience on tugboats?

23 A Yes, sir, I have.

24 Q When was that?

25 A Before I went into the Navy in 1941. I had been

1 lzrf

Aitken-direct

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2 licensed mate with Dalzell boats in New York Harbor.
3 After I come back from World War II, I was released
4 to inactive duty and I was master of coastwise towboats.
5 I worked on harbor towboats in New York Harbor and at
6 the present time, in fact just two weeks ago, my boat
7 is laid up, I was working as mate on towboats in New
8 York Harbor docking and undocking ships, moving oil
9 barges, moving scrap barges and so forth.

10 Q Can you give us an estimate of how many times
11 you have piloted vessels up and down the Hudson River?

12 A Well, just to keep the figure down let's say
13 a thousand plus.

14 Q Were you and are you a member of the Hudson
15 River Pilots Association?

16 A I had been a member of the Hudson River
17 Pilots Association, yes, sir.

18 Q How long were you a member of the Hudson River
19 Pilots Association?

20 A Oh, for 15 years.

21 Q Were you an officer of that Association?

22 A From 1965 to 1967 I was on the executive board
23 and was Secretary of the Hudson River Pilots Association.

24 THE COURT: When you were Secretary, sir, how
25 many members did the Association have?

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1 THE WITNESS: There were 12 members.

2 THE COURT: 12 members?

3 THE WITNESS: Yes, sir.

4 Q Are you familiar with Buoy 35 in the upper
5 Hudson River?

6 A I am very familiar with Buoy 35.

7 Q I want you to assure, Captain, the following
8 facts:

9 That on October 18, 1973 Tug Judy Moran with loaded
10 Barge B#95 in push tow ahead was proceeding upriver to
11 Albany at night in good weather with the tide ebb.

12 Can you tell us whether under those circumstances
13 the position of Buoy 35 would be of importance to the
14 master of the Tug Judy Moran?

15 A Most important, because No. 35 to me is my
16 danger angle. If my bow was on the other side of 35,
17 I am in trouble. If 35 is out of position, I'm in trouble.
18 I have to use No. 35 as my guide to make my turn because
19 I have ebb tide, I have a very heavy tow and if 35
20 is not in position, I can be over on the east side
21 of the channel and in trouble.

22 Q Assume that at the time the Judy was proceeding
23 upriver, a downbound vessel, which was the Morania 300,
24 met and passed the Judy port to port off Buoy 35 and assume
25

1 lzrf

Aitken-direct

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2 further that at that time unknown to either master
3 Buoy 35 was off station about 50 feet to the east.
4 Would that effect have any affect upon the navigation
5 of the Judy Flotilla?

6 A Well, unknown to the Judy, he is in trouble.
7 The Morania 300 is not because the Morania 300 was
8 light and the fact is the Morania 300 could have gone
9 to the west of Buoy 35 and still be in deep water but
10 the fact that he was bound down, he takes a certain
11 amount of room in the channel, he had an ebb tide,
12 that even as light as the tide may have been would crab
13 him to the east a little bit.

14 The boat that is in real trouble is the Judy
15 Moren with his heavy tow that is 50 feet further over
16 than he figured he was because of the buoy being out of
17 place.

18 THE COURT: Captain, you have done this a great
19 deal and been by these buoys a good many times.

20 THE WITNESS: Yes, sir, I have.

21 THE COURT: On a clear night with an ebb tide
22 would it be your practice to navigate visually?

23 THE WITNESS: On the river piloting anywhere,
24 any river, Chesapeake Bay, Delaware River, Hudson River
25 or anywhere, you have basic courses and you know that --

2 you look at your compass occasionally. That is your
3 basic course, but you see a light ahead and that
4 is a point that you recognize. It is local knowledge.

5 THE COURT: What you are saying is with experience--

6 THE WITNESS: With experience you would pick
7 a point ahead and I would steer on that point ahead.
8 First, though, I would see that I was coming around to
9 where I wanted to be on my compass but I wouldn't steer
10 by my compass. I would steer by a point ahead.

11 THE COURT: That you can see?

12 THE WITNESS: Yes, sir.

13 THE COURT: And you have indicated it is very
14 important here that you would check on Buoy 35?

15 THE WITNESS: That is the most important
16 point on that particular turn.

17 THE COURT: The theory is you are going to make
18 your turn as Buoy 35 is abeam, is that right?

19 THE WITNESS: No, you see, when you have a
20 heavy tow such as this Bouchard 95 and your towboat --
21 it is not like you have a ship with a rudder and -- you
22 have that heavy tow. You have heavy wires on that tow
23 and you can't put your wheel hard left and start to
24 make a turn. You have to start your tow gradually coming
25 around at, say, No. 4 buoy. You started coming around

1 lzrf

2 because it is not so much coming around, it is checking
3 up your --

4 THE COURT: You start your turn back at Buoy
5 34?

6 THE WITNESS: That is correct.

7 THE COURT: What happens if because of another
8 tow, a series of barges, Buoy 35 might be obscured?

9 THE WITNESS: Well, if Buoy 35 is obscured and
10 you can't see it, then your best thing to do is slow down
11 or stop and drift until you can see it.

12 THE COURT: Excuse me for interrupting.

13 MR. VOLK: Perfectly all right.

14 Q Captain, is it important for a navigator
15 to know the nature of the bottom in the river as he
16 is navigating up the river?

17 A Most important. There is a book of symbols
18 that is published that have all the various types of
19 symbols that show the bottom of the river. They show
20 your landmarks. They show a steeple, they show a church,
21 they show rocks, they show marshes, sand, hard bottom,
22 whatever your occasion is, the symbols, and they
23 should be on every chart that is published for a navigator.

24 Q I show you a book. Is that the book of symbols
25 you have reference to?

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1
2 THE COURT: Well, I think I sustain the objec-
3 tion just to that question, but I will let the captain
4 testify rather to his experience with charts he has used, do
5 they indicate this kind of obstruction?

6 THE WITNESS: Yes, and I will explain to you
7 why. When they dredge a channel --

8 THE COURT: No, just the question purely whether
9 on the charts that you have seen and perhaps in other
10 waters whether this kind of obstruction--

11 THE WITNESS: Most definitely do.

12 THE COURT: They are marked.

13 THE WITNESS: Yes.

14 THE COURT: That is the answer.

15 Q On that specific chart, Captain, is there
16 another such obstruction which was an old lighthouse which
17 is so shown on the chart?

18 A You mean 284?

19 Q Yes.

20 A Yes. Down further at the Old Maids, there
21 is a former lighthouse there that has been washed away
22 during ice times and they have erected a steel structure
23 beacon and here you can see right here is the symbol of
24 an old lighthouse that is shown there.

25 MR. VOLK: Do you want him to mark it, your

1 zb-2

2 Honor?

3 THE COURT: Yes, he can mark it.

4 Q Would you point it out again, is it this little
5 spot north of the light?

6 A That's correct, just north of the light.
7 That little spot right there, that's a symbol to show,
8 it is a concrete base of an old lighthouse.

9 Q Is that inside or outside the channel?

10 A Outside the channel.

11 MR. SCHULMEISTERS: May we please have a
12 circle drawn around it, your Honor.

13 THE COURT: Have the witness draw a circle.

14 Q Draw a circle around the old lighthouse base
15 that is shown there.

16 Now draw an arrow to that. Put down "Old
17 Maids."

18 Y ou have written in the words "Old Maids,
19 concrete lighthouse base"?

20 A That is correct.

21 Q Do you have an opinion as to whether there
22 should be some -- or should have been been some kind
23 of warning to mariners concerning the existence of the
24 spot on Moran Exhibit 7 which is in front of you?

25 A Yes, it should have had a symbol that says

1 zb-3 Aitken-direct

2 "PKY" or an "R" with a 17 on it, or whatever the depth.
3 That symbol should have been on that chart to show there
4 was a rock bottom there.

5 Q There is a 17-foot mark on the chart, isn't
6 there, on 284, just to the east of the channel?

7 A Yes, there is, but there is no symbol anywhere
8 on there to show whether this is mud bottom, whether it is
9 a bottom silt or whatever it may be. There is just
10 a 17-foot mark on there.

11 Q Is the upper Hudson River rocky all the way
12 through?

13 A There are rock cuts that have been blasted and
14 dredged and I would say 25 per cent of the upper Hudson is
15 rock cuts. The other -- I said 25 per cent, didn't I?

16 Q Yes.

17 A The other 75 per cent is more or less mud,
18 silt and so forth.

19 THE COURT: Where does the upper Hudson start?

20 THE WITNESS: The upper Hudson starts at four
21 mile point.

22 THE COURT: Where is that?

23 THE WITNESS: Just above Hudson. About four
24 miles above Hudson.

25 THE COURT: This place we are talking about here

2b-4

1 was south of that?

2 THE WITNESS: No, this was north of that.

3 THE COURT: So this is the area?

4 THE WITNESS: This is the area where about 25
5 per cent of it have been dredged, blasted rock cuts and the
6 rest of it is mud and silt.

7 Q Do you have any opinion concerning the scale
8 of Chart 284?

9 A The scale of Chart 284 is much too small for
10 a navigator to make courses safely and navigate any type
11 of a large vessel in that channel.

12 Q Is the scale sufficient to enable display of
13 all hazards and obstructions to navigation?

14 A No, it is not. If they displayed it you
15 wouldn't have any room on the chart. In fact the chart don'
16 have any shore markings like steeples or a church or
17 so forth that a man could take bearings from. There is
18 no markings whatsoever.

19 Q Is there in fact such a steeple or church
20 that you know of on the easterly side of the channel there
21 which is not shown on the chart?

22 A Yes. In Stuyvesant there is a white steeple
23 that we as navigators on the river know. We use it, we
24 steer on it, but it is not indicated on the chart.
25

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Aitken-direct

Q Do you know of any other areas where larger scale charts are used for piloting in confined waters?

A Yes, they have over the past ten years been constructing charts that they call SC Folding Charts. Now, they will take a part of Long Island Sound, say from Bridgeport to New Haven, and you navigate on the regular chart and then they have inserts like for Bridgeport, they will have an insert and that will be doubled up in the scale so that the navigator going in there has a good-sized chart to look at, to see the symbols, to lay his courses down on and know what he is doing.

Q Was that ever done for the upper Hudson River?

A No, I discussed that with two different Coast Guard --

THE COURT: Was it ever done?

THE WITNESS: No, it never was done.

Q As secretary of the Hudson River Pilot Association did you ever recommend that it be done to any Governmental official?

A Yes, I did.

Q Will you tell us when and where you did that?

A Oh, I would say when they were dredging this place up there around 1966. I consulted with Commander Brasier, the Coast Guard Commander in Albany in charge of

1 zb-6

2 theAlbany District, and then again his relief,Commander
3 Bazjou.

4 Q What did you recommend to those gentlemen?

5 A That they have these SCFolding Charts made up
6 of the entire Hudson River with inserts that would have
7 taken an area such as this and had it in a larger scale
8 to make it easier on navigators.

9 Q Would it have been safer also?

10 A Absolutely safer.

11 MR. SCHULMEISTERS: Objection to the con-
12 clusion.

13 THE COURT: Well,I suppose it would be fair
14 to say, Captain, you talk about the inadequacy of the
15 chart and the effect that it has on a pilot, I suppose he
16 has to be more careful than he would be otherwise?

17 THE WITNESS: That is correct.

18 THE COURT: It puts a higher duty on the pilot,
19 is that right?

20 THE WITNESS: A man like myself that has been
21 running this river for many years, I am not affected by
22 it, but a man like Captain Maynard is affected by it because
23 he don't run it as often as I do, and he has to depend on
24 these aids to navigation for the safe navigation of the
25 river.

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THE COURT: I think Captain Maynard did testify he had done this not a thousand times, but I think he indicated he had done it over 100 times.

THE WITNESS: A very competent man.

Q Did you know Captain Maynard or hear of him before you came into court?

A Yes, I did.

MR. SCHULMEISTERS: Objection.

THE COURT: Wait a minute.

Q Do you know his reputation?

A Yes, I do.

Q What is it?

MR. SCHULMEISTERS: Objection.

A It is an excellent reputation.

THE COURT: He can give his reputation. You think he is a very able man?

THE WITNESS: I do.

THE COURT: Was he a member of your association?

THE WITNESS: No.

THE COURT: How many were there, 13?

WITNESS: 12.

THE COURT: He wasn't one of those 12?

THE WITNESS: No.

Q As secretary of the Hudson River Pilots Assoc-

1 zb-8

Aitken-direct

2 iation, did you ever have occasion to make any additional
3 recommendations to the Coast Guard concerning aids to navi-
4 gation in the upper Hudson River?

5 A Yes, I did.

6 Q Will you tell the Court about that?

7 A The American Merchant Marine Institute and
8 their member companies were concerned about the delay in
9 their vessels in the port of Albany because the pilots
10 didn't consider it safe to navigate the upper Hudson during
11 the dark hours. Groups of the pilots were called to the
12 American Merchant Marine Institute office to discuss im-
13 provement in the aids to navigation. We recommended that
14 14 ranges and a number of new lighted buoys be put in the
15 river. We met with the Coast Guard in the Custom House on
16 May 12, 1966, and discussed these aids, improvements and
17 so forth at length.

18 Q What particular aids and improvements did you
19 recommend?

20 A Well, in this particular area here, we recommended
21 a range light on that Beacon 40, there would have been
22 a range light to guide around there.

23 We recommended a range light that would go
24 over the Stuyvesant range that you would see astern when
25 you were coming up that range, would show astern and you

1 zb-2

Aitken-direct

2 would be coming up on it and just when you were ready to
3 make that turn, this range on Number 40 and Houghtaling
4 Island would start to come around and there would be no
5 doubt about it. When you were on these ranges or when you
6 seen it coming, you knew how to steer and go around and
7 safely get yourself on that range.

8 Q There isn't any range on that stretch of river
9 just south of Houghtaling Island, is there, now?

10 A No, not on the upper river. There is one range
11 further down on Silver Point.

12 Q I am just talking about the area between Buoy
13 30 and 36.

14 A No.

15 Q There is no range there, is there?

16 A No.

17 Q Is that one of the area that you recommended
18 that a range be put in?

19 A That is correct. We recommended two ranges in
20 that area.

21 THE COURT: Just for my benefit, when you say
22 "range," what does it mean?

23 THE WITNESS: There are two beacons constructed,
24 two lights. One would be a steady fixed light and the
25 other one would be pulsating. As you come around and

1 zb-10

Aitken-direct

2 you got the two of them in line, then you know you were
3 right in the center of the channel.

4 THE COURT: One light would be astern and
5 one light would be forward?

6 THE WITNESS: One light would be like up on
7 a little hill and the other one would be lower. When you
8 came around you would see the two of them in line.

9 THE COURT: You would be lining them up?

10 THE WITNESS: You would be lining them up.

11 THE COURT: If you lined them up, you knew you
12 were in the channel.

13 THE WITNESS: You were in the middle of the
14 channel.

15 Q Is there any buoy marking the easterly side
16 of that channel in that spot just south of Houghtaling
17 Island?

18 A No, there is not. Right now there is, but
19 there hadn't been at this time.

20 MR. SCHULMEISTERS: Objection, your Honor.

21 THE COURT: Captain, supposing you had range
22 lights, they would show you right in the middle of the
23 channel, is that right?

24 THE WITNESS: That is correct.

25 THE COURT: And supposing at the time there

1 zb-11

Aitken-direct

2 was some tanker or barge coming downstream and you were
3 going upstream, how would the range light help you?

4 THE WITNESS: The tanker might be right on
5 your ranges?

6 THE COURT: Right. What would you do?

7 THE WITNESS: We talk to him on the radio tele-
8 phone --

9 THE COURT: Just getting to the question of
10 range lights. I understood you to tell me you line up the
11 range lights. That proves you are right in the middle of
12 the channel.

13 THE WITNESS: That's right.

14 THE COURT: That is a safe place to be, but
15 now if you have this ship coming down, a small tanker coming
16 downstream and she is in the same channel you are. I
17 suppose the rule of the road on that, you couldn't both
18 be in the middle of the channel, could you?

19 THE WITNESS: No, they same some people want
20 their side in the middle.

21 We give each other a passing signal --

22 THE COURT: The range lights, you wouldn't
23 be in line with the range lights, would you?

24 THE WITNESS: You would be off just a little
25 bit, but the amount that you would be off wouldn't be what

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Aitken-direct

much and there is very seldom on the range that one ship blocks out the range so another ship can't see them. You open up the range one way to move over for them and as soon as he goes by you get right back on the ranges again.

THE COURT: If the tanker is coming south-bound in the same channel you can't both be in the center of the channel and the rules of the road provide that you make a port-to-port passing?

THE WITNESS: Correct.

THE COURT: And if that deprives you of getting on the eastern side of the channel and if you are on the eastern side of the channel, these range lights would not be lined up?

THE WITNESS: No.

THE COURT: I am slow, but that is what I was getting at.

Q Could you get a fairly accurate position depending upon how far they were cracked?

A Oh, yes. If the -- there is another thing about these range lights too. The range lights that are up above on the New Baltimore Range there, you have to be on the range or within a couple of degrees of the range or you can't see it. When the light goes out that means you are off the range, that means get yourself back on the

1 zb-13

Aitken-direct

2 range again.

3 Q And it is possible to pass in the New Baltimore
4 Range and still keep the range lights in sight?

5 A Usually you don't pass on the New Baltimore
6 Range. You talk to each other. You gave passing sig-
7 nals and he will say, "I am coming down on the New Balti-
8 more Range. I got the ebbtide."

9 I would say to him, "Okay, I will lay back, you
10 come on ahead. After you go by, then I will move."

11 Q Is it possible for ranges to be constructed
12 so as to warn a mariner that he is getting outside the
13 channel when he is passing another ship?

14 A Not on the Hudson River. There are places
15 where they could have several ranges so you can tell how
16 far you are, you are in the middle of the channel, you are
17 in the right -- the middle quarter, the right outside
18 quarter and so forth, but there are no such ranges on the
19 Hudson River.

20 Q In other words, a series of light in a hori-
21 zontal row to tell you on what part of the channel you
22 are in?

23 A What part of the channel you are in, yes.

24 THE COURT: How do you signal a port-to-port
25 passage?

1 zb-14

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2 THE WITNESS: We have our old local signals.
3 We call on the radio telephone, Channel 13. That is our
4 safety signal and say, "Morania 300, this is the Judy Moran,
5 I will pass you on 1."

6 "Okay, that's fine."

7 Or, "We have our searchlight. We will flash
8 the searchlight on once."

9 He flashes the searchlight on once back and
10 we understand that as local knowledge. This is not legal.

11 MR. SCHULMEISTERS: Your Honor, may I also
12 make a comment for the record --

13 THE COURT: Please, let me ask the witness
14 a couple of questions. I don't want to hear your comments
15 at the moment.

16 You say this isn't legal?

17 THE WITNESS: No, it is not. The Coast Guard
18 requires a whistle.

19 THE COURT: The Coast Guard requires a whistle
20 signal but in fact if you have communication with the
21 other craft, then you observe the other craft, you do it
22 with a light?

23 THE WITNESS: With a light or with a radio
24 telephone.

25 THE COURT: All right.

1 zb-15

Aitken-direct

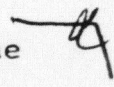
2 MR. SCHULMEISTERS: May it please the Court--

3 THE COURT: Please. I don't want to hear
4 any more about it. You will get a chance, you relax and
5 you will get a chance to cross-examine.

6 MR. SCHULMEISTERS: I don't want to ask him
7 any question, your Honor.

8 THE COURT: I don't want to hear from you.

9 Ask your questions.

10 Q Did you discuss with the army engineers the 
11 cost of establishing such ranges that you have recommended:

12 A Yes. The army engineers told us it was going
13 to cost \$300,000 to make these improvements.

14 Q Did you also discuss the benefits to be
15 derived by the shipping industry as a result of estab-
16 lishment of such --

17 A After we received the letter from the Coast
18 Guard telling us what the cost would be, the American
19 Merchant Marine Institute got their members together, they
20 figured up how much it cost per hour to keep their ships in
21 Albany that were delayed or have them wait down in the
22 anchorage until they could go up and they found in 1966
23 it was \$251,000 worth of man hours or ship hours.

24 In 1967 it was \$274,000 --

25 THE COURT: Where is the anchorage?

1 zb-16

Aitken-direct

2 THE WITNESS: At Kingston.

3 THE COURT: That is south of --

4 THE WITNESS: That is south of where we
5 are talking.

6 Then they projected it up into 1970 where they
7 figured it was going to cost almost \$300,000 in delay
8 time on vessels because they didn't consider it safe to
9 run the river during the dark hours because the aids to
10 navigation were not sufficient.

11 Q Has there been any improvement in the aids to
12 navigation so far as ranges are concerned since the time
13 you spoke to the Government on this?

14 A They haven't constructed one new range on the
15 river.

16 Q Are you familiar with the publication known as
17 The American Practical Navigator by Bowditch?

18 A Oh, when I was third mate going to sea I
19 used to use that.

20 Q You say you have served as master on vessels
21 at sea, naval vessels?

22 A Yes, sir, I have.

23 Q Could you explain the difference between the
24 navigating at sea and navigating in narrow channels?

25 A Well, navigating at sea, you took angles of

1 zb-18

Aitken-direct
cross

2 your Honor.

3 THE COURT: It isn't binding, of course, on
4 this cause. I don't think I want to go into this very
5 much. You say as a pilot, having been through this all
6 the time, that pilots rely on the fact that Congress says
7 the Government ought to provide aids to navigation.

8 THE WITNESS: That is correct.

9 THE COURT: All right.

10 Q Do you have anything further to say on the
11 distinction between deep sea navigating and navigating in
12 confined waters?

13 A There is two different types of navigation.

14 THE COURT: I think you have said that and
15 I am only interested in navigation in confined waters.
16 You say Bowditch's theories on that don't apply. It is
17 something you can use only in the sea, but not in these
18 confined waters. I can understand that.

19 MR. VOLK: You may examine.

20 CROSS-EXAMINATION

21 BY MR. SCHULMEISTERS:

22 Q Captain, you circled here what you claim to
23 be the Old Maids concrete lighthouse base.

24 A Yes.

25 Q Is that visible above water?

1 zb-19

Aitken-cross

2 A Yes, it is.

3 THE COURT: I am not sure what is visible.

4 Is it the marker that is visible --

5 THE WITNESS: The concrete base is visible.

6 There are times during freshets, it is covered up.

7 THE COURT: When the river is high?

8 THE WITNESS: Yes.

9 Q Actually, it is a symbol there for a rock awash,
10 is that not correct, Captain?

11 A Yes.

12 Q And that is the symbol now that you have on page
13 12 of Exhibit 37 which is rock awash, is that correct?

14 A That is correct.

15 Q Thank you. So that is not something that is
16 17 feet below water, is it?

17 A No, it is not.

18 Q You also mentioned that sometimes you talk
19 on the VHF to the downbound vessel and you say, "I will
20 hold back and then we will pass in a certain area," you do
21 that quite often?

22 A Oh, yes.

23 Q Is it easier to pass in a straightaway than
24 in a bend?

25 A Oh, definitely.

zb-20

Aitken-cross

1 Q So there would be nothing wrong and it would
2
3 not be difficult for the upbound vessel to hold back in
4 the Stuyvesant Anchorage and then pass the vessel in the
5 straightaway or wait until he comes down?

6 A If the downbound vessel was a big vessel, yes.

7 Q Regardless of size, it is easier to pass in
8 the straightaway than in a bend, is that not true?

9 A Oh, it is easier to pass anything on a straight-
10 away than it is in a bend, yes.

11 Q You said you were the president of the -- I am
12 sorry, the secretary of the Pilots Association in '66-'67?

13 A Yes.

14 Q Did there come to your attention the grounding
15 of a barge Alexander some time in '65?

16 THE COURT: If you recall.

17 A No, I don't recall the Alexander grounding.

18 Q Do recall the Athelstane?

19 A I recall her grounding just north of Malden.

20 Q Who was the pilot on board?

21 A The pilot on board was Townsend.

22 Q Wasn't it you, Captain?

23 A The Athelstane -- oh, yes, on the Athelstane, th.
24 was at Fitch's Wharf, that's correct.

25 Q Over the years being a Hudson River pilot

1 zb-21

Aitken-cross

2 you have known that dredging in many areas occurred
3 through rock?

4 A That is correct.

5 Q And this was something that you found out be-
6 cause you were a pilot and you had to know about it when you
7 piloted, is that correct?

8 A Correct.

9 Q And you had no problems finding out that in-
10 formation?

11 A None whatsoever.

12 Q Now, this SC Folding chart that you were talk-
13 ing about, what does the SC stand for?

14 A I haven't any idea. I have looked all over
15 the chart to find some kind of a symbol, but I don't know
16 what the "SC" stands for.

17 Q does it not stand for "small craft"?

18 A It could be.

19 Q And it was used for small pleasure boats,
20 Captain, and that is where you have the information,
21 pleasure boats?

22 A No, it is not confined to pleasure boats. I
23 use it in Long Island Sound. I use it on the South Shore
24 of Long Island.

25 Q In Long Island Sound you do not have a 400-

1 zb-22

Aitken-cross

2 foot channel, do you? You have much more water, is that
3 correct?

4 THE COURT: I don't follow that. I think
5 that is much too general a question. I suppose in some
6 parts of Long Island Sound you have a channel, do you
7 agree, Captain?

8 THE WITNESS: Yes, in New Haven you have a
9 channel. In Bridgeport you have a channel. In Port
10 Jefferson you have a channel.

11 THE COURT: City Island.

12 THE WITNESS: No. City Island don't have a
13 dredged channel.

14 THE COURT: Hell Gate.

15 THE WITNESS: Hell Gate is not really considered
16 a dredged channel. It is a natural waterway.

17 Q Captain, can you explain to me what a gyrocom-
18 pass is?

19 A It is a compass that operates on the principle
20 of inertia.

21 Q And it is powered by electricity?

22 A That is correct.

23 Q And it always points at the true north?

24 A It should, yes.

25 Q And if there is no gyro error, it will always

zb-23

Aitken-cross

point to true north, is that correct?

A Correct.

Q And as the vessel turns, the gyro will not oscillate but it will slowly just click off by quarter degrees each turn, is that not correct?

A Some gyros have a lag in it. I have seen a gyro that will click off at quarter degrees and you will be turning a little faster and you will be maybe 10 degrees and the gyro will only have caught up to 8 degrees and you have to wait until your gyro settles down. I have seen this happen.

Q But that is not the way it usually happens?

A No, that is not the principle of a good running gyro.

Q A good running gyro does not do that?

A No.

Q If you have an oscillating gyro, it is working improperly?

MR. VOLK: I object, your Honor. There hasn't been any evidence of an oscillating gyro.

THE COURT: I know what he is talking about. Your experience is the gyros usually don't oscillate.

THE WITNESS: No. The general run -- they hunt. It is what they call "hunt." They keep going like this and

175a

zh-24

Aitken-cross

they hunt to get their right position.

Q The hunt is within a quarter of a degree, is it not, Captain?

A It is a quarter of a degree. The quarter of a degree is the hunting motion of a gyro.

Q When you pilot a vessel after you have settled down on a course, do you check your vessel by glancing at the radar to see that the landmarks are where they should be and so forth, to look at the lay of the land?

THE COURT: That is an awfully broad question. I don't know how the captain can answer that question.

Q Let me rephrase it. As you pilot the vessel, do you occasionally refer to radar?

A I keep the radar turned on as much as I can, daylight and night time, because I familiarized myself with the river as a picture. When I look down in that radar, if it is dense fog, I know just exactly where I am, and I do. I coordinate the steering and the radar.

Q And you have navigated in fog by reference to radar?

A Absolutely, yes.

Q And have you done that on the Hudson River?

A I have taken many boats all the way to Hudson and docked them in the fog.

1 zb-25

Aitken-cross

2 Q So in other words, if you are going up the
3 river by looking at the radar you can see whether or not
4 you are getting in or out of the channel?

5 A Yes, but you must understand too that I am not
6 doing the steering. I am doing the piloting. I have a
7 Mate on watch. I have a man at the wheel steering and my
8 only job is to tell him what course to steer and I can
9 look in the radar. I do the complete con.

10 Q But there is somebody else who steers the
11 vessel?

12 A That is correct.

13 Q But you have someone to steer it, if you are
14 the pilot, you can use your radar to find out whether or
15 not you are in or out of the channel?

16 A That is correct.

17 Q Captain, have you ever piloted a Moran tug-
18 boat?

19 A I have, yes.

20 Q You have. And this is while a Moran tugboat
21 has been pushing something, pushing or towing a barge?

22 THE COURT: Was it a push tow?

23 THE WITNESS: No, I have had it both ways.

24 I have had it on a hawser. I had the Carrie Moran. I
25 towed a cement barge up on a hawser and then I pushed her

zb-26

1 down ahead.

2 Q Up or down means the Hudson River?

3 A I towed her up light and pushed her down loaded.

4 Q But it is on the Hudson River?

5 A Yes.

6 Q Were you then acting as a pilot on that tug-
7 boat?

8 A No, you are employed as captain.

9 Q When were you employed as captain by Moran?

10 A I am going to have to take a guess at it be-
11 cause I don't know the exact year. It was during my
12 time off as a pilot. I would go over there and do a job
13 like that. Let me say 1968 or '69.

14 Q And this was a cement barge, right?

15 A Correct.

16 Q Captain, is it not true that Moran was using
17 people with Hudson Pilot or Hudson River pilots'licenses to
18 tow their --

19 THE COURT: I don't understand the question.
20 Is the question whether Moran was using members of this
21 Association?

22 MR. SCHULMEISTERS: Yes, members of that
23 Association.

24 THE COURT: Do you know?
25

1 zb-27

Aitken-cross

2 THE WITNESS: Your Honor, may I have my
3 attorney come up. Something is happening here in this
4 questioning that I feel very, very bad about, and I would
5 like to confer with my attorney before we go on with the
6 questioning.

7 THE COURT: Who is your attorney?

8 THE WITNESS: Mr. Volk.

9 THE COURT: I don't know what all this is
10 about. It sounds like a tempest in a teapot. You can
11 confer with him if you want to.

12 (The witness conferring privately with
13 Mr. Volk.)

14 Q Is it not true, Captain, that Moran employed
15 Hudson River pilots after the barge Alexander grounded in
16 the Hudson River around 1965, they did so for a while?

17 A I know they did so for a while, yes.

18 Q Incidentally, I think you mentioned that going
19 upriver you would have to start your turn somewhere around
20 Buoy 34, is that correct? I think it was in response
21 to the Court's question.

22 A No, when you get to Stuyvesant Light, that is
23 No. 32, and you are moving over to 34 with this heavy
24 barge, you start coming around to the left very easy and
25 particularly when you have an ebbside. You don't

1 zb-28

Aitken-cross

2 start -- you don't let yourself get across the tide.

3 THE COURT: I think the question he is asking
4 you is how soon after you pass Light 34 would you start
5 making --

6 MR.SCHULMEISTERS: I just wanted to make sure
7 I understood it correctly.

8 THE COURT: How soon after Light 34 would you
9 start --

10 THE WITNESS: Before I get to 34.

11 THE COURT: Before you get to 34?

12 THE WITNESS: Before I get to 34.

13 Q In other words, if you hold on until you have
14 35 abeam, that is too late?

15 A Much too late.

16 Q Have you ever had any experience in cartography,
17 Captain, mapmaking?

18 A Only for the licenses that I have sat for.

19 Q That is actually drawing a picture of the chart
20 from memory for your license examination?

21 A Yes.

22 Q But you have never participated in any mapmaking?

23 A No.

24 Q So you have no idea what goes into preparing
25 a chart for the Hudson River?

1 zb-29

Aitken-cross

2 THE COURT: He is not a cartographer.

3 A Well, if you have to be a cartographer to know,
4 then I don't.

5 THE COURT: You know if the bottom of the river
6 is dangerous, you would like it marked.

7 THE WITNESS: I would like it marked, yes.

8 Q Is it not true that the Coast Pilot tells you
9 that there are rock in many places in the Hudson River?

10 A It is there, yes.

11 Q And, of course, the various rocks that you know,
12 you know from your own experience of having been a Hudson
13 River pilot and having studied up for the examination and
14 having actually checked with the Army engineers that you
15 said you did, is that correct?

16 A That is correct.

17 Q And these are things that someone who is acting
18 as a Hudson River pilot should be doing?

19 A Correct.

20 Q By the way, Light 32, what do you call that?

21 A Stuyvesant.

22 Q Have you ever heard the name Kinderhook Light?

23 A Yes. They have named for all of the aids
24 to navigation on the Hudson River. One time they had names
25 like Old Maids, Nine Mile Tree, Kinderhook. Now it is

1 zb-33

2 THE COURT: Any other questions?

3 RECROSS-EXAMINATION

4 BY MR. SCHULMEISTERS:

5 O On the gyrocompass if it is properly working,
6 the gyro repeater by which the man at the wheel steers
7 is electronically connected to the master gyro so they
8 are both synchronized?

9 A That is correct. You synchronize them even
10 before you start your trip. You synchronize your gyro.

11 MR. SCHULMEISTERS: Thank you.

12 THE COURT: Thank you, Captain. You are ex-
13 cused.

14 (Witness excused.)

15 MR. SCHULMEISTERS: May I make a comment,
16 your Honor?

17 THE COURT: What is your comment?

18 MR. SCHULMEISTERS: The comment was, your Honor,
19 if you recall when you asked the witness how he signals
20 and then you repeated that question, his first answer was
21 movement of the arm blowing the whistle, and that did not
22 get on the record, and that is what I wanted to put on
23 the record.

24 THE COURT: All right, you have it on the
25 record. I can't get terribly excited about it.

1 zb-37

2 THE COURT: I think I would prefer it because
3 I would like him to see what you have marked so he can tell
4 what he wants to mark.

5 MR. SCHULMEISTERS: To my recollection there
6 isn't very much in that deposition.

7 THE COURT: That is what I want you to do with
8 all depositions.

9 MR. VOLK: I marked them all. The way I did it.
10 I have started at page 3 and at the end of every place
11 where I want --

12 THE COURT: Just take a blue pencil and put it
13 opposite where you want me to read and put in the
14 front the page numbers so I don't have to wander all through
15 it. These depositions are an incredible nuisance.

16 Then you mark them in red any parts you want
17 me to read.

18 MR. VOLK: I offer into evidence a copy of Chart
19 284 which was marked by the witness Eliassen. I offer
20 it in evidence as Moran Exhibit 10.

21 THE COURT: It will be received.

22 (Moran Exhibit 10 was received in evidence.) /D

23 MR. VOLK: I offer into evidence a letter from
24 the Department of the Army, dated 15 November 1973, to the
25 Commander, Third Coast Guard District, produced by the //

1 zb-38

2 Government pursuant to discovery, and I understand the
3 Government agrees as to authenticity.

4 MR. SCHULMEISTERS: I agree to authenticity.
5 I object to the exhibit, your Honor. I do.

6 THE COURT: Let me see the letter.

7 (Pause.)

8 THE COURT: I think I will sustain the objec-
9 tion. Keep that marked for identification.

10 MR. WOLK: May I be heard, your Honor?

11 THE COURT: This is what happened afterwards.
12 This is a problem of the conflict between the Army Engineers
13 and the Coast Guard. They are all part of the Government.
14 I think really my job here is to decide whether the position
15 of this light was the cause of the accident.

16 MR. WOLK: I offered it for several purposes,
17 your Honor. First, I would like to present my offer of
18 proof, if you don't mind, for the record.

19 First, I think it is entirely relevant that
20 subsequent to this event the Government established a buoy
21 over the base of this lighthouse.

22 THE COURT: I know, but that hasn't any bearing.
23 Regardless of fault, they heard the story and they may have
24 done it. But that doesn't prove fault to me.

25 MR. WOLK: It proves the existence of a pre-

1 zb-39

2 existence of a pre-existing duty. I have a memorandum of
3 law on this point, your Honor, which I think is very
4 important to us.

5 THE COURT: I will leave it marked for identi-
6 fication. You can give me your memorandum of law. I
7 don't think it makes much difference. He is objecting to
8 it and I am sustaining the objection.

9 MR. VOLK: The other point I offered it
10 for was evidence of what was struck. It was an old light-
11 house as shown by Mr. Pinata, who was chief of the opera-
12 tions division. I consider that of critical importance
13 to my case, your Honor.

14 THE COURT: I am adhering to the ruling. Give
15 me a memo on that. I am leaving it marked for identifica-
16 tion. All it seems to me is two Government departments
17 arguing about something after this hazard happened. I
18 don't see --

19 MR. VOLK: Would the Court accept it as evidence
20 of the fact it was an old lighthouse?

21 THE COURT: I don't think it makes much differ-
22 ence.

23 MR. VOLK: It makes the difference if it was
24 the knowledge of the Government.

25 THE COURT: I am adhering to my ruling.

1 zb-40

2 What is your next point?

3 MR. VOLK: My next exhibit is Moran Exhibit 12 12
4 for identification, which is a letter from -- dated 13
5 November 1973, from the Commander, Third Coast Guard District
6 to the Commanding Officer of the U. S. Coast Guard Cutter
7 Red Beach.

8 THE COURT: This is the answer to the previous
9 letter?

10 MR. VOLK: Yes, sir.

11 MR. SCHULMEISTERS: Objected to.

12 THE COURT: I will keep that marked for identi-
13 fication. I take it you want to convince me by memorandum
14 on that. You know, these things are sort of silly in
15 these admiralty cases because I have to read them to rule
16 on them, so I know what they say.

17 MR. SCHULMEISTERS: This is why I put it in my
18 original brief memorandum. We are objecting to all evidence
19 of this nature.

20 THE COURT: This is all after the fact and
21 represents --

22 MR. VOLK: These letters also establish the
23 fact the Government knew there had been prior groundings here
24 and it is shown right in the reports.

25 THE COURT: I still think the only issue is

1 zb-41

2 whether this buoy being out of place, whether that was the
3 cause of this accident.

4 MR. VOLK: It is also our position, your Honor,
5 that he had no warning of the danger to the east which
6 had he had as he testified, he might have behaved differ-
7 ently.

8 THE COURT: What is your next one?

9 (Moran Exhibit 12 was marked for identifica-
10 tion.)

11 MR. VOLK: The next one is an aids to naviga-
12 tion operation request, dated 19 December 1973. 13

13 THE COURT: Whose request is that?

14 MR. VOLK: It is a request from Mr. Wetmore of the
15 United States Coast Guard, Chief of Operations Division,
16 or Chief of the Aids to Navigation Division, I guess it is,
17 to the Chief of the Operations Division.

18 MR. SCHULMEISTERS: Objected to, your Honor.

19 THE COURT: This is after the accident. I will
20 keep that marked for identification.

21 MR. VOLK: I have the same arguments to make with
22 respect to that.

23 Exhibit 14A is the deposition, I offer in 14A
24 evidence the deposition of John J. McNutt. Again we will
25 do the same thing.

1 zb-57

2 concerned you are getting way off the beam. Have you got
3 any small craft charts for the Hudson River?

4 MR. SCHULMEISTERS: Not for the Hudson River.

5 THE COURT: I won't receive that. You can
6 mark it for identification.

7 (Government Exhibit D was marked for
8 identification.)

9 MR. SCHULMEISTERS: One more thing, your Honor.
10 I think we have a stipulation with Mr. Volk that prior to the
11 setting of Buoy 35 in April of 1973, the buoy at all times
12 was an unlighted buoy.

13 THE COURT: You so stipulate?

14 MR. VOLK: Yes, I do.

15 THE COURT: All right.

16 MR. SCHULMEISTERS: In other words --

17 THE COURT: Don't in other words. He stipulated.
18 I take the stipulation.

19 T H O M A S S U L L I V A N, called as a witness by
20 the defense, being first duly sworn, was examined
21 and testified as follows:

22 MR. VOLK: Your Honor, may I during Captain
23 Sullivan's testimony have Captain Aitken at the counsel
24 table?

25 THE COURT: Do you have any objection to that?

1 zb-58

Sullivan direct

2 MR. SCHULMEISTERS: No.

3 THE COURT: All right.

4 DIRECT EXAMINATION

5 BY MR. SCHULMEISTERS:

6 Q Captain Sullivan, what is your profession?

7 A I am a Hudson River pilot.

8 Q How long have you been a Hudson River pilot?

9 A I have been licensed by the -- holding a Federal
10 license for about 15 years. A state license about 12.

11 Q How long have you acted as a Hudson River pilot?

12 A I have acted as a ship pilot in the Hudson
13 River since 1965, March 1st. I had a one-year apprentice-
14 ship beginning in March of '64. I had to ride one hundred
15 ships in the company of another pilot in order to qualify
16 for a State license.

17 Q Then you became a full-fledged pilot?

18 A Yes.

19 Q So in order to be able to become a full-fledged
20 pilot under the State license, you had to accompany at least
21 another pilot on 100 trips?

22 A You had to be licensed Federally and then you
23 had to make 100 trips in the company of another pilot.
24 Then you had to sit for an examination. Then you were
25 licensed on limited grades that progressed over a three-year

1 zb-59

Sullivan-direct

2 span.

3 Q Can you explain what those limits were?

4 A If I recall they have been changed. I believe
5 in my case I rode on 7500 ton ships for approximately
6 a year. Then I rode, and I could be off a little on this,
7 I believe the next grade for me was a 10,000 gross ton
8 vessel of 22 foot draft for a year.

9 And then unlimited draft, unlimited tonnage.

10 Today that has been extended to two more grades.

11 Q You have had this unlimited license as an un-
12 limited pilot for how long?

13 A I would say '67 and '68.

14 Q This grading of the type of vessels that you can
15 take up the Hudson River, is that by the Federal Government
16 or by the State Government?

17 A The State. New York has a Pilot Commission who
18 oversee the operation and they designate the draft and the
19 tonnage.

20 Q When you sit for this examination, what do you
21 have to do?

22 A For the State you have to -- they ask you a lot
23 of questions about ship handling, characteristics of the
24 river --

25 THE COURT: You are telling me about the

1 zb-60

Sullivan-direct

2 Federal you got first?

3 THE WITNESS: I am talking about State.

4 THE COURT: Federal went first?

5 THE WITNESS: Yes.

6 THE COURT: What do you have to do for that?

7 THE WITNESS: I had to sit for a five-day examina-
8 tion for the Coast Guard.

9 THE COURT: Written and oral examination?

10 THE WITNESS: Basically a written examination.

11 THE COURT: Five days for the Coast Guard?

12 THE WITNESS: It would depend on how you pro-
13 gressed.

14 I think in my case it took me five days.

15 Q Did you have to draw an outline of the Hudson
16 River?

17 A Yes.

18 Q Did you have to mark on it obstructions and buoys
19 and things like that?

20 A Yes.

21 Q What did you have to do for the State license?

22 A The State license was basically the same. Roughly
23 the same examination. And you had to draw the river
24 one inch to a mile. Not the entire river. You didn't
25 know what sections you would be asked to draw. So you had

1 zb-61

Sullivan-direct

2 to know the whole river but they would ask you to draw a
3 section, I believe in my case I had to draw from Stony Point
4 to Little Stony Point and Cocksackie Island to New Baltimore.

5 Q Cocksackie to New Baltimore, that includes the
6 area of Houghtaling Island?

7 A Yes.

8 Q Incidentally, have you served in any capacity
9 as an officer of the Pilots Association?

10 A Yes. We are a small association and I was the
11 president, I believe, for two years.

12 THE COURT: When was that?

13 THE WITNESS: I haven't really checked these
14 dates too well, but I believe it was in '73 to -- from
15 January '73 to January '74. At least two times I served
16 as president.

17 THE COURT: How many members were there when you

18 THE WITNESS: When I started there were 13. It
19 dropped down to the present load right now is 10. It will
20 be nine in a few days. I was president when I was con-
21 tacted in regard to this, so it must have been in '74.

22 Q Captain, do you recognize this chart, sir?

23 A Yes, I do.

24 THE COURT: What exhibit is that you are showing
25 him?

1 zb-62

Sullivan-direct

2 MR. SCHULMEISTERS: That is Exhibit 6, your
3 Honor.

4 Q Approximately how many ships have you navigated
5 up and down the Hudson River?

6 A I would say I probably averaged 80 a year for
7 the 12 years.

8 Q Prior to becoming a Hudson River pilot did you
9 serve at any time on any tugboats?

10 A I was employed by the Dalzell Tug Company for
11 about eight years and I served on the McAllister Towing
12 Company during a vacation while I was a pilot for about a
13 month.

14 Q Does Dalzell Towing Company still exist?

15 A No, sir.

16 Q Have you ever piloted any Moran tugboats?

17 A Yes, I have.

18 Q Have you served on the Judy Moran?

19 A I have not served on the Judy Moran. I have
20 been on the tug.

21 Q You have been on board the tug.

22 A Yes.

23 Q When you were working for Dalzell, what did you
24 do then? What was your job?

25 A I started there as a deck hand in 1954, and I

1 zb-63

Sullivan-direct

2 worked my way up to captain.

3 Q What did you do as captain?

4 A General harbor towing.

5 Q Did you ever go up the Hudson River on her?

6 A Yes.

7 Q What kind of towing did you do up the Hudson
8 River?

9 A Well, we towed oil barges up there and we were
10 engaged in towing loaded Liberty ships from Tompkins Cove,
11 which is in the lower Hudson River, up to Albany. They
12 were loaded with grain. We towed the loaded ships up and
13 the light ships back to the reserve fleet.

14 Q What size ships were these?

15 A These were Liberty ships.

16 Q The barges?

17 A In those days I guess a big barge is maybe 250
18 feet or so.

19 Q The barges come bigger now, right?

20 A Yes.

21 Q Does your Association supply, to your knowledge
22 has it supplied over the years, pilots to Moran?

23 A Yes.

24 Q Do you recognize the name of the barge Alexander?

25 A Yes.

1 zb-64

Sullivan-direct

2 Q What kind of a barge was that?

3 A It is a cement barge, pretty large barge that
4 they load cement up in the Hudson River.5 Q Is there any particular incident connected with
6 that barge that you know of?

7 MR. VOLK: I object to hearsay, your Honor.

8 THE COURT: What is the question, is there any
9 particular what?10 MR. SCHULMEISTERS: Is there any particular
11 incident of that barge that you know of.12 MR. VOLK: Unless he establishes he was on the
13 barge or the tug, I object to it as hearsay, of course.14 THE COURT: I would think so. I still don't
15 understand the question. He says he knows about the
16 Alexander. Have you ever been on board her?

17 THE WITNESS: Yes.

18 THE COURT: When were you on board her?

19 THE WITNESS: Well, in the course of towing her in
20 the Hudson River down, I had occasion -- the tug pushed her
21 but I had occasion to be on board the barge.

22 THE COURT: When was that?

23 THE WITNESS: Over the years I think in 1966 I
24 was employed by Moran with the M. Moran, and the Esther
25 Moran, to tow this barge, as well as a couple other barges.

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1 zb-65

Sullivan-direct

2 THE COURT: And you were on the barge and not
3 the tug, is that it?

4 THE WITNESS: The tug pushed her. I was in the
5 wheelhouse of the tug.

6 Q Did you direct the navigation of the flotilla?

7 A Yes.

8 Q Around when did this employment by Moran of
9 Hudson River pilots start?

10 A I could be off on these dates, but I believe it
11 is some time in '65 or 1966. We were engaged to two those
12 barges down the river.

13 Q Did the employment by Moran of Hudson River
14 pilots to pilot tugs towing or pushing some of the barges
15 occur with relationship to the grounding of the barge
16 Alexander?

17 MR. WOLK: I object.

18 THE COURT: Sustained.

19 MR. SCHULMEISTERS: The point is, interrogatories
20 were asked about prior groundings, have been answered, and
21 include the grounding of the barge Alexander. And pre-
22 viously Mr. Volk, who had his case on, he said he would be
23 referring to interrogatories and I said that I would --

24 THE COURT: What difference is all this going to
25 make?

1 zb-66

Sullivan-direct

2 MR. SCHULMEISTERS: The point, your Honor, is
3 this. On and off over the years Moran has on occasion
4 employed Hudson River pilots.

5 THE COURT: So what? So what?

6 MR. SCHULMEISTERS: I think that it is quite
7 important with respect to some of the arguments in the
8 brief that I -- I don't want to start arguing the motion
9 here.

10 THE COURT: Is there any doubt about it that
11 they sometimes employed members of the Association?

12 MR. VOLK: I have no doubt about it.

13 THE COURT: All right, why make such a big noise
14 about it.

15 MR. SCHULMEISTERS: All right, as long as there
16 is no doubt about it, I will proceed.

17 Q Captain Sullivan, would you please look at the
18 Chart 284 and assume that you are navigating up the Hudson
19 River and let's say you are in an area by Light 24 which is
20 just south of Cocksackie Island.

21 MR. SCHULMEISTERS: I believe that may be a
22 bit lower than the Xerox shows that you have, your Honor.

23 A That would be above the Island.

24 Q I am sorry, you are correct. My mistake. It is
25 Light 17 what I meant, Light 17, which is a 24-foot light.

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Sullivan-direct

How would you navigate?

A What am I navigating?

Q What would you do?

A What am I navigating, a ship?

Q Let's take a ship first.

A A ship?

THE COURT: Let's not take a ship. You said you pushed tows. Let's say you were push towing.

Q A barge approximately the size of 340 feet long, the size of the #95, about 70 feet wide and drawing 21-1/2 feet. Tell me how would you navigate this.

A How was the current running?

Q Ebb.

A It is a clear night?

Q Clear night, yes.

A For that beacon, and I am bound for Albany?

Q Right.

A Well, I would assume the barge is lashed up good and tight so she is handling good. I would make a security call on my VHF radio, Newton Hook, and I would state on the VHF radio what I am, a tug pushing a loaded oil barge, approaching, and I would call there, approaching Old Maids Light. It is actually called Beacon 23. It is on the upper end of Rattlesnake Island. I would say I am north-

1 zb-68

Sullivan-direct

2 bound and if somebody answered me, then I would mentally
3 figure out where we were going to meet. If nobody answered
4 me I would proceed on my way.

5 Q Let's say supposing -- would you repeat that
6 security call or would that be the only security call you
7 make as you go up?

8 A As a matter of fact I generally make two
9 security calls at that particular point and then when I
10 got around Stuyvesant, south of the anchorage I would make
11 another security call.

12 Q Suppose you received an answer saying that there
13 is another downbound vessel. let's say somewhere in the
14 area of New Baltimore. What would you do then?

15 A Well, if he answered my call when I was up
16 around Cossackie I would advise him that I was northbound and
17 try to set up a passing situation. Normally all those
18 signals are one whistle passing, so I would tell him I
19 will meet you, as a matter of fact I would meet you in the
20 straight-away at Stuyvesant Anchorage, and I will pass you
21 on one whistle and I will call you again when I have you
22 in sight.

23 Q Any particular reason why you would want to
24 meet him in the straight-away off Stuyvesant Anchorage?

25 A Well, because it is twice as wide. It is just

1 zb-69

Sullivan-direct

2 an ideal place to pass vessels there and that is where I
3 would recommend passing.

4 Q Would you consider meeting in the area of Buoy
5 35?

6 A No.

7 Q Why not?

8 A Well, for a lot of reasons. Number 1, I wouldn't
9 want to pass at a bend in the river when I can set up a
10 passing signal on the straight-away. That happens to be in
11 my opinion a bad spot in the river.

12 Q The bend in the river is a bad spot in the river

13 A Yes.

14 THE COURT: Please don't just repeat what
15 his answers are.

16 You say you would like to meet where you have
17 a straight stretch?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Okay.

20 Q Suppose you received a security call and you
21 did not make an agreement that you would pass on the straight
22 away. Is there anything else that you would do?

23 A I would have made the agreement. I would not
24 have gone up there -- if he answered me?

25 Q Yes.

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Sullivan-direct

1 A If he answered my security call and he was in
2
3 the area?

4 Q Yes.

5 A I would have waited for him.

6 Q If he did not answer you, you did not hear any-
7 body.

8 A Then I would assume that it was clear.

9 Q Would you ever at night pass in the area of
10 Buoy 35?

11 A Pass another vessel?

12 Q Yes.

13 A I would avoid it.

14 THE COURT: Supposing you call up this fellow
15 and he is coming down river all right and at the speed he is
16 going and the speed you are going, you are going to meet
17 by Buoy 35, what would you do?

18 THE WITNESS: Well, I had the ebbtide, I would
19 wait there.

20 THE COURT: Wait where?

21 THE WITNESS: I would wait at the straight-away.

22 THE COURT: Which straight-away?

23 THE WITNESS: At Stuyvesant Anchorage.

24 THE COURT: You would slow down?

25 THE WITNESS: I do many times in other places.

201a

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Sullivan-direct

THE COURT: You say that you slow down --

THE WITNESS: If I had the tide against me I would tell him that I will wait here and wait for you to come down and pass you on the straight-away.

Q In making your turn, and I understand you wouldn't pass anyone in a bend. In making your turn, of what importance is Buoy 35 to you?

A Well, I have to say that the Hudson River Pilot Association doesn't recommend night navigation in the Hudson River. We do not pilot certain ships in the Hudson River at nighttime.

Q Why not?

A Because we consider the upper Hudson River a bad place to be with a ship of certain drafts. We might take a light ship up there, but we practice limited navigation on the Hudson River.

Q What do you mean by light draft? Would 21-1/2 feet be light or --

A That would be considered light.

Q So you would take up a 21-1/2 foot draft, a barge at night pushing with a tug?

A Yeah, we have.

Q Let me ask you this. As you are navigating, would you refer to the radar if you had a radar?

zb-72

1
2 A I would use it as a secondary aid.

3 Q Would that also tell you whether or not you
4 have ships further up ahead?

5 A Not really, no.

6 THE COURT: Why is that?

7 THE WITNESS: You have to use a much smaller
8 range. Maybe a mile and a half, so you would have to see
9 him if it was clear. If you use a six or seven mile range
10 you wouldn't be able to see anything. It would be like
11 the palm of your hand on the radar screen.

12 Q If you use a one and a half mil scale then
13 it shows you the outline of the shoreline and the aid such
14 as a dike and the light and so forth?

15 A Yes.

16 Q With the use of the radar as a secondary aid,
17 can you check to see whether or not you are within the
18 channel?

19 A It will be a secondary check on my visual sight-
20 ing. I would sight myself on a landmark or a hill or
21 a beacon and I might walk over and look on the radar and
22 check to make sure everything looks good to me, yeah.

23 Q How would you make your turns in the river?

24 A Visually?

25 Q Yes.

1 zb-73

Sullivan-direct

2 A With no traffic?

3 Q With no traffic.

4 A I would stay in the middle of the channel.

5 Q What would you use as reference points?

6 A Reference points? I would use -- I do use
7 the beacons and of course, if it is daylight I would use
8 land marks. Nighttime you can't see --

9 THE COURT: Well, nighttime with nobody in the
10 channel on this particular stretch, what would you be using
11 to keep yourself in the middle of the channel?

12 THE WITNESS: The beacons.

13 THE COURT: Which ones?

14 THE WITNESS: What stretch would I be in, your
15 Honor?

16 THE COURT: The stretch going by Buoy 35.

17 THE WITNESS: My primary lights there would be
18 Light 32. We call that Kinderhook Light. It is a red
19 light. And I would use the light on the end of the dike
20 there.

21 THE COURT: What is that?

22 THE WITNESS: That is Light 36. And then
23 Houghtaling Light is the next light up, it is a white.

24 THE COURT: Has that got a number?

25 THE WITNESS: That is Number 40, I believe.

1 zb-74

Sullivan-direct

2 Yeah, 40. I would try not to line up the red lights which
3 would be on my starboard side. These lights on the dike
4 and that quick flashing red and that light on the shoreline
5 there, Number 32, I would try to avoid lining them up. Keep
6 them open.

7 THE COURT: So that you would figure you were
8 west of them, is that it?

9 THE WITNESS: Exactly.

10 THE COURT: Is that right?

11 THE WITNESS: Yes.

12 THE COURT: Do you use any other lights when you
13 are going up there to be sure you would be west, 32, 36
14 and 40?

15 THE WITNESS: I of course would go and look
16 on the radar --

17 THE COURT: No, I mean visually.

18 THE WITNESS: Visually? I would eventually pick
19 up the range light up above --

20 THE COURT: Which light is that?

21 THE WITNESS: That is a range light.

22 THE COURT: Which one?

23 THE WITNESS: I would use this Number 35 as a
24 reference point just as another check to see just exactly
25 where I was.

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THE COURT: When would you use 35?

THE WITNESS: After I got lined up.

THE COURT: Lined up with what?

THE WITNESS: I would make my turn to beacon.

A little bit north of that became Number 32. Head for the dike. Then if that looked good to me, I would look in the radar, make sure I was heading on the dike. Then I might go over and look at the other buoy, constantly checking

THE COURT: The other buoy being what, 35?

THE WITNESS: Yeah.

Q Assume that Buoy 35 is 50 feet into the channel, could you still navigate?

A I doubt if I would be able to tell it was 50 feet into the channel if I was by myself going up there. I would say yes, I would be able to navigate. I am talking about myself now.

Q Supposing you had someone coming down in that area?

A I wouldn't have met them there.

Q You just would refuse to meet anybody, you would hold back?

A I would hold back.

THE COURT: All these vessels are equipped with these systems so you can be in touch with them?

1 zb-76

Sullivan-direct

2 THE WITNESS: I carry personally two VHF walkie-
3 talkies. One is a backup.

4 THE COURT: Is there any rule --

5 THE WITNESS: For pilots it is rule you should
6 carry a VHF portable radio and the ships are required to
7 carry them also.

8 THE COURT: Whose rule is that?

9 THE WITNESS: The portable radio I carry is
10 under the rule of the Pilot Commissioners. I don't know
11 whether it is a set written down rule that has penalties
12 if you don't, but I know it is a requirement that you carry
13 one. And the Coast Guard requires the ships to carry
14 a VHF radio. Channel 13 is the recognized station on the
15 river.

16 THE COURT: Well, supposing there was some kind
17 of a pleasure boat, a small yacht, a schooner, would he
18 have something like this?

19 THE WITNESS: Probably not, no.

20 THE COURT: Supposing he went along and opposite
21 35 there when you saw this fellow coming down on the other
22 side of the channel, what would you do?

23 THE WITNESS: You mean a small yacht?

24 THE COURT: Yes.

25 THE WITNESS: I would disregard him.

1 zb-79

Sullivan-direct

2 THE COURT: It is a reference point. So you
3 can tell from that hopefully that you think you are in the
4 middle of the channel instead of too far to the right or
5 too far to the left, is that not right?

6 THE WITNESS: Exactly.

7 Q Is 35 mainly something to show the left-hand side
8 of the channel?

9 MR. VOLK: I object to the leading.

10 THE COURT: I don't understand the question.

11 Q Does 35 mark the right-hand side of the channel?

12 A It marks the west side of the river.

13 Q The west side. Outbound that would be the left-
14 hand side, right?

15 A Yes.

16 Q Would 35 tell you whether or not you are approach-
17 ing the easterly edge of the channel?

18 THE COURT: I may be dumb, but I don't have to be
19 that dumb.

20 MR. SCHULMEISTERS: I will withdraw it.

21 Q Over the years have you known what the bottom
22 characteristics are in the Hudson River?

23 A Well, when I was trained I was told it was
24 basically a rock bottom river.

25 Q Would you assume any soft spots in that river,

1 zb-80

Sullivan-direct

2 especially in the area to the right and outside of the
3 channel just south of Houghtaling Island?

4 MR. VOLK: It seems to be two questions in
5 one, your Honor.

6 THE COURT: I think it is two questions. If
7 you understand the question you can answer it.

8 THE WITNESS: I think I understand it.

9 A I would say it is rock over there.

10 Q How do you know that?

11 A Well, I have seen a barge aground over there about
12 ten years ago. I was told it was on a rock at the time
13 and I was told that an old lighthouse base had been in
14 there, broken up and was lying in that section in there and
15 it was just basically a rock spot in the river to stay
16 away from.

17 Q You have known all along it is a rock spot in the
18 river?

19 A Yes, sir.

20 Q Do you know the term "rock cut"?

21 A Yes.

22 Q What is it?

23 A It is a term that is not used so much any more
24 but when I was first training in the river, the areas of
25 the river that were known rock areas where dredging companies

1 zb-81

Sullivan-direct

2 had dredged and found rock were known as rock cuts.

3 Q The area south of Houghtaling Island is a rocky
4 bottom?

5 A Yes, sir.

6 Q Do you know any requests for ranges right in
7 the area of the reaches just south of Houghtaling Island?

8 A I believe in the early sixties, the latter part
9 of the sixties, it could be there was a lot of pressure
10 brought on the pilots, ship pilots in that area, to run the
11 river at nighttime.

12 Q By whom?

13 A By steamship companies that were regularly running
14 the area and ships were delayed, they had to wait until
15 daylight to sail and I believe the Association that I belong
16 to, the Pilots, as well as another Association, Texaco
17 Pilots and Mobil Pilots, other small associations, groups of
18 pilots, they countered this by saying if you put a lot of
19 ranges in there maybe we could run the river at night, but
20 the ranges were never put in.

21 Q Did you expect the ranges to be put in there
22 all along the river?

23 A No, sir.

24 Q Why not?

25 A Because I don't think the traffic warranted the

1 zb-82

Sullivan-direct

2 expense, from my experiance anyway.

3 Q So this was basically a request because of
4 pressure by the oil companies and some steamship companies?

5 A That's what I was led to believe, yes.

6 Q When you meet another vessel, are you required
7 to sound any signal?

8 A Yes. Passing signals, whistles.

9 Q With what?

10 A The ship's whistle.

11 Q Do you sound signals when you pass with a
12 whistle?

13 A Yes.

14 Q Does the agreement on a walkie-talki or the VHF
15 excuse you from sounding the whistle?

16 A No, sir.

17 THE COURT: I don't like that question. There
18 has been some testimony here that because they don't want
19 to wake the people at night and one reason or another, if
20 you are equipped with lights you can do it by a light instead
21 of by a whistle if it is clear.

22 Have you ever done that?

23 A Answered with a light?

24 THE COURT: Yes, when you communicated with
25 somebody and you were going to pass on this nice straight

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stretch, a fellow came down, would you always whistle at him
or would you put a light on him, one light to show a
starboard to starboard?

THE WITNESS: Personally I have never shown a
light, but I have seen it.

THE COURT: You always blow the whistle?

THE WITNESS: Yes, sir.

THE COURT: Is it one blast for port to port
and two for starboard to starboard, is that right?

THE WITNESS: One blast, I would be altering my
course to starboard. I would pass him port to port. Gen-
erally we initiate a passing signal with a walkie-talkie
and even then we tell the guy, "I am going to blow you a
whistle, too, Cap, just to cover the books."

Q As far as you are concerned you do blow the
whistle signal?

A You are required to.

THE COURT: That is what the regulations provide.

THE WITNESS: Exactly.

THE COURT: So you are not worried about waking
up the poor people in Houghtaling Island?

THE WITNESS: No, sir.

MR. SCHULWEISTERS: That is all I have, your
Honor.

1 zb-84

2 THE COURT: All right.

3 CROSS-EXAMINATION

4 BY MR. VOLK:

5 Q Captain Sullivan, when you were asked by Mr.
6 Schulmeisters what you would do if you heard a response from
7 another vessel to your security call, you said you would
8 agree to pass down by Stuyvesant and you would wait for him.
9 is that correct?

10 A Yes.

11 Q You gave that answer without any information
12 from Mr. Schulmeisters as to what type of vessel you got
13 the response from. Would you do that with every kind of
14 vessel?

15 A Well, I would assume that any vessel who
16 answered me on the VHF radio -- I would have done it with
17 any vessel who answered.

18 Q What kind of vessel did you assume in your answer
19 to Mr. Schulmeisters?

20 A I assumed a ship. Any type of self-propelled
21 vessel.

22 Q Would you consider a self-propelled barge in
23 that category?

24 A Most definitely.

25 Q A small barge, 298 feet long and 40, 50 feet

1 zb-85 Sullivan-cross

2 wide?

3 A Most definitely.

4 Q Equipped with outboard motors?

5 A Most definitely.

6 Q Who wide is the channel at that spot, where Buoy
7 35 is?

8 A Right opposite 35?

9 Q Yes.

10 A It was wider, it probably narrows down to 400
11 feet if the buoys are on station and less if they are not.

12 Q And it is wider just south of Buoy 35, is that
13 right?

14 A Yes.

15 Q How wide is it there?

16 A Probably goes to the maximum of 520 feet or so.

17 Q Don't you consider it possible for two vessels
18 to safely pass, one being 70 feet wide and the other being
19 40 feet wide in that area?

20 THE COURT: Which area now?

21 MR. VOLK: In the area of Buoy 35, your Honor.

22 THE WITNESS: Are you talking about petroleum-
23 carrying vessels?

24 Q Well, assume first any kind of vessel.

25 A Well, I wouldn't. I don't assume -- I personally

1 zb-86

Sullivan-cross

2 consider that a bad place to pass. I would not pass there--

3 THE COURT: Is that because as you indicated,
4 I think you indicated that you would rather stop and
5 wait below because you are changing course when you go by
6 this area, is that right?

7 THE WITNESS: Two vessels are swinging. The
8 northbound vessel is looking at a red and green light coming
9 down on him and I would wait for that straight-away. Over
10 the 12 years I probably waited 40, 50 times there.

11 Q Can you explain why you would consider it not
12 safe to pass off Buoy 35? Let's say one vessel is 43 feet
13 wide and the other is 70 feet.

14 A It is a bend in the river and you are swinging.
15 It is very hard to have any relationship to the shoreline.
16 It is nighttime. Shadows. I wouldn't recommend it.

17 THE COURT: You said something about buoys being
18 off station. Have you found buoys being off station?

19 THE WITNESS: Over the years?

20 THE COURT: Yes.

21 THE WITNESS: There is buoys off station. We
22 try to report them when we can.

23 THE COURT: How many times have you found that
24 experience?

25 THE WITNESS: As a matter of fact I just got off

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a ship last night and we reported three aids that were malfunctioning or out.

THE COURT: On the Hudson River?

THE WITNESS: Yes, sir.

THE COURT: How far off station were they?

THE WITNESS: The two with lights on the --

THE COURT: Lights not working?

THE WITNESS: Not blinking.

THE COURT: That kind of thing?

THE WITNESS: Yes, sir.

THE COURT: I am thinking of buoys where they are not supposed to be.

THE WITNESS: It is very hard unless you are in the daytime and unless you can see and line up some land mark to estimate position unless it is darn right in the middle of the channel.

THE COURT: I suppose going by these areas you can usually tell whether the thing looks off station, can't you?

THE WITNESS: You get a feeling.

THE COURT: Have you seen that often?

THE WITNESS: I have seen it in the wintertime when the ice moves the buoys around. In the wintertime the lighted buoys get replaced by unlighted buoys and they get

1 zb-88

Sullivan-cross

2 moved around with the ice. We try to keep track of them
3 and tell the other pilots where we last saw them.

4 THE COURT: Do they navigate to Albany in the
5 winter months?

6 THE WITNESS: We try to, yes, sir.

7 THE COURT: It is open?

8 THE WITNESS: Yes, sir, it is open.

9 THE COURT: Let's take a five-minute recess.

10 (Recess.)

11 Q Captain Sullivan, were you a member of the Pilot
12 Association in the sixties when the Hudson River Pilots and
13 others requested ranges from the Army Engineers?

14 A I believe I was, yes.

15 Q Did you participate in making those requests?

16 A Well, I was a junior man. I am sure I had noth-
17 ing --

18 THE COURT: You didn't?

19 THE WITNESS: No, sir.

20 THE COURT: Okay.

21 Q You knew that Captain Aitken was participating
22 in making those requests, didn't you?

23 A I didn't know for sure, no.

24 Q He was the secretary of the organization at
25 the time?

1 zb-89

Sullivan-cross

2 A I assume he was if you are saying so.

3 Q If ranges had been installed as requested,
4 what effect would that have on the safety of navigation
5 in the upper Hudson River?

6 A In the nighttime?

7 Q Yes.

8 A I doubt very much if it would have made it a
9 heck of a lot safer. It would have helped, but the ranges,
10 you are on these courses for such a short amount of time
11 that by the time you line the ship up you have to chance
12 immediately.

13 Q Is it your testimony you feel just as safe in
14 a river without --

15 THE COURT: He didn't say that. He said he
16 didn't think he would be much safer.

17 You say the ranges are so short it wouldn't
18 make much difference?

19 THE WITNESS: If I had something to say about it,
20 I would prefer a sector light. Where it would show a
21 white light and as you got off the channel it would start
22 to show pink and then when it got into red, it would be
23 critical. But there are ranges in the river now.

24 Q There is a range at New Baltimore?

25 A Yes.

1 zb-90

Sullivan-cross

2 Q That is the next stretch of channel just north
3 of the stretch we are talking about here of Buoy 35, is that
4 correct?

5 A Yes, sir.

6 Q There is a range in that section?

7 A Yes, sir.

8 Q That section of the river is just about, as
9 I measured on the chart, just about as long as the range --
10 the reach which is where Buoy 35 starts?

11 A I didn't --

12 Q Does it look to you to be about the same length?

13 A I would say not that course in there, no.
14 Across the face of Buoy 35?

15 Q Look at the distance between Buoy 39 and Buoy 35
16 as opposed to the distance between Buoy 39 and Light 40.

17 A About the same.

18 Q About the same distance?

19 A Yes.

20 Q So a range in the lower area which we have
21 been talking about between Buoy 39 and 35 would be about the
22 same distance as the New Baltimore range and do you con-
23 sider the New Baltimore range to be unhelpful to you?

24 A No, sir.

25 Q It is an important aid to navigation?

1 zb-91

Sullivan-cross

2 A It is an aid.

3 Q Does it assist you in determining whether you
4 are in or outside the channel?

5 A It determines whether I am right in the middle
6 of the channel if I am right on it.

7 Q Does it assist you in determining whether you
8 are inside or outside the channel?

9 A Yes.

10 Q If you had a similar aid for the lower part
11 Reach 23, you know what I mean when I refer to Reach 23,
12 then Light 29 and Light 35, if you had a similar aid that
13 would assist navigators at night whether he was in or not
14 inside the channel, is that true?

15 A I think it would be very hard to get on that
16 range. It would be an aid if you could do it.

17 Q You say a ship never steadies down in that
18 reach 23?

19 A Not for long.

20 Q Is it your testimony that the ship never steadies
21 down in that reach 23?

22 A They steady down.

23 Q What do you use when you are navigating up
24 reach 23, that is, between 35 and 39, to tell you where the
25 easterly edge of that channel is?

1 zb-92

Sullivan-cross

2 A Well, I steer for Houghtaling Light. I have a
3 course of about 355.

4 Q That is Light 40?

5 A Yes.

6 Q That is in the New Baltimore reach?

7 A Yes.

8 Q It is not in the same reach as Light 35, is it?

9 A No.

10 Q My question is, what do you use to tell you where
11 the easterly edge of the channel is in reach 23?

12 A Well, I use the light on the dike.

13 Q That doesn't mark the edge of the channel, does
14 it?

15 A Well, I visually get myself off of that dike.

16 THE COURT: That is Light 38?

17 Q It is a visual estimate?

18 THE COURT: Is that Light 38?

19 THE WITNESS: I am talking about the beacon
20 light 36. When I am on that stretch from 35 up to 39, in
21 that area?

22 Q Yes.

23 A I use that beacon on the end of the dike to see
24 how handy I am to it.

25 Q That is Light 36?

1

A Yes, sir.

2

Q You look at it visually?

3

A Yes, sir.

4

5

Q And you can tell by looking at it visually where the easterly edge of that channel is?

6

7

A No. The relation to where I am to that light would tell me.

8

9

Q Is that by distance or by angle?

10

A I think by distance.

11

Q And you estimate that distance visually as you go up?

12

13

A I would look back over my shoulder at the lights astern of me.

14

15

Q But in fact there is no buoy marking that easterly edge, is there?

16

17

A I consider the 32 beacon and the light on the end of the dike, 36, as my easterly side.

18

19

Q That is your personal range?

20

A Personally speaking, yes.

21

Q And that requires you to look ahead and then look astern?

22

23

A Right, over my shoulder.

24

Q That is not as accurate a way of navigating as if you have a range, is it? Are there two lights, one over

25

1 zb-94

Sullivan-cross

2 the other?

3 A I don't think practically speaking you could
4 set a range up there because as you are running down on the
5 previous course --

6 Q Captain, will you answer my question. Is
7 that as accurate a way of navigating as if you have a range.
8 one over the other set so --

9 THE COURT: I have listened to this, but the
10 fact of the matter is there was no range at this particular
11 time.

12 MR. VOLK: We are contending there should have
13 been.

14 THE COURT: There wasn't any range. So when
15 you have no range, you can't navigate on the assumption
16 that there was a range, is that right?

17 THE WITNESS: That's right.

18 MR. VOLK: I am trying to develop evidence
19 to establish that the range would have helped navigators.

20 THE COURT: I can see that and I can see a lot
21 of things that might have helped. I think we have been
22 into that.

23 Q Do you know of any other request that was made
24 by the Hudson River Pilots in conjunction with the ranges
25 back in 1966 to improve the safety of navigation in the

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upper Hudson River?

A I would have to guess. I wouldn't know specifically.

Q If I told you that they had requested lighted buoys, would that --

A Yes. That request was made.

Q From the same group to the same people?

A Exactly.

Q Now, the Government complied with that request, didn't they?

A Yes, sir.

Q They didn't comply with the ranges?

A They didn't.

Q Didn't?

A No, they did in the lower river in a couple of places, but not up there, no.

Q But you are aware of the fact that your organization strongly urged the Government to install those ranges?

A I don't know whether they strongly urged. They urged, I guess.

Q I show you Moran Exhibit 7 and tell you that this is a survey made by the Army Engineers after the grounding of October 18, 1973. I point to a spot which

1 zb-96

Sullivan-cross

2 is marked in red. I point also to the position of Buoy
3 35 as shown.

4 I ask you, Captain Sullivan, with reference
5 to this spot in red, do you see it just at the edge of the
6 channel there?

7 A Yes.

8 Q And I tell you further that that spot is a
9 pinnacle of rock which was an old lighthouse base.

10 Were you aware of the existence of that spot as
11 being as close to the edge of the channel as it is shown on
12 that chart, were you aware of that in October 1973?

13 A Yes, sir.

14 Q How were you aware of that?

15 A I was told when I broke in as a pilot, and in
16 the early sixties I saw a cement barge aground there as I
17 passed on another vessel.

18 Q WAS it aground at that spot?

19 A Yes, sir.

20 Q Or inside?

21 A I would say on that spot.

22 Q Do you remember what date that was when you
23 say that?

24 A I was an apprentice pilot. I was in the
25 company of another pilot, so it had to be when I was an

1 zb-97 Sullivan-cross

2 apprentice so I would say it was in 1964.

3 Q Are you aware that after that date the Army
4 Corps of Engineers undertook to remove certain rock in the
5 area, after the day you saw that stranding, were you aware
6 of that?

7 A In that stretch there?

8 Q Yes.

9 A I know they were dredging at the time. I
10 don't know about that specific area, no.

11 Q Is it important for a pilot to know the
12 bottom characteristics of the Hudson River?

13 A I would think yes, definitely.

14 Q Would you say that Chart 284, which you have in
15 front of you, accurately describes the bottom of the Hudson
16 River in that area opposite Buoy 35?

17 A Well, it just shows a shoal over there 17 feet.

18 Q It doesn't show rock, does it?

19 A It doesn't say rock.

20 Q It doesn't show the base of an old lighthouse?

21 A No, sir.

22 Q There is mud in this area, isn't there?

23 A I assume there is a little bit of mud in
24 between a lot of rock, personally.

25 Q South of Buoy 35 if you look on that chart,

1 tb-99

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2 isn't that so?

3 A Yes.

4 THE COURT: Whether the chart shows it or not,
5 you keep in the channel, I think you said.

6 THE WITNESS: I stay in the channel.

7 THE COURT: Do you make a study of what is out-
8 side the channel?

9 THE WITNESS: I try to listen to other conversa-
10 tions from other pilots, experiences they have had, weight
11 it all. I have heard fellows say I got forced here, I got
12 forced there and she is still floating, so I weigh all
13 of that.

14 Q With regard to passing agreements, you do,
15 don't you, Captain, when you meet another vessel, tell the
16 other man if he has a VHF that we will meet and pass on one
17 whistle or something to that effect?

18 A I try to initiate before I see him. When I
19 see him we re-initiate the situation.

20 Q You do on occasion pass without sounding a
21 whistle signal?

22 A No, sir.

23 Q How about the other vessel, does he always
24 sound the whistle?

25 A Some do, some don't.

1 zb-100

Sullivan-cross
redirect

2 Q So it isn't uncommon at all just to pass by
3 reason of the oral agreement on radio, one port to port, is
4 that so?

5 A It is done, but I always think if something
6 happens, somebody is going to be in trouble.

7 Q But it is done?

8 A I have seen it done, yes.

9 Q In fact it is done quite frequently, wouldn't
10 you say?

11 THE COURT: Now wait. All he can say is he has
12 seen it done. But you have never done it yourself. You
13 always blow that old whistle?

14 THE WITNESS: Yes, sir.

15 MR. VOLK: Nothing further, your Honor.

16 THE COURT: Any other questions?

17 REDIRECT EXAMINATION

18 BY MR. SCHULMEISTERS:

19 Q That barge that went aground in the early
20 sixties, do you know what tug company was towing that barge?

21 MR. VOLK: I object unless he knows. It is
22 hearsay, your Honor.

23 THE COURT: You asked him about the barge that
24 he saw? Do you know whose barge --

25 Q Do you know what tug company was towing that

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barge?

A Yes.

Q Which one?

A Moran Towing.

Q As far as the bottom characteristics, aside from what you have on a chart, have you had other sources available where you can find out what the bottom characteristics are?

A Other than this chart?

Q Yes.

A Well, as I said in the case before, the Army Engineers have charts that we all, the pilots in the Hudson River have purchased, that indicate the bottom and the contour of the bottom, word of mouth as to what the bottom is.

Q So actually the Hudson River pilots have gotten charts from the Army Engineers showing the contour of the bottom?

A Yes.

Q That has been done over the years?

A Yes, sir.

Q And the Coast Pilot also mentions that the bottom in the upper Hudson River is rocky.

A Yes, sir.

MR. VOLK: Is that a statement or a question?

1 zb-105

2 MR. SCHULMEISTERS: May I have a moment, your
3 Honor?

4 THE COURT: Yes.

5 MR. SCHULMEISTERS: I have one thing I would
6 avoid giving you, a number of documents, your Honor, is that
7 if I can have a stipulation from Mr. Volk that other than
8 what Captain Maynard testified to, there is no evidence of
9 any obstruction having been in the channel, is that correct?

10 MR. VOLK: Is what you are saying is that apart
11 from this particular object which it came in contact with,
12 that this accident was not related to any other obstruction?

13 MR. SCHULMEISTERS: Right. And the object
14 that we have --

15 THE COURT: There is no question about that, is
16 there?

17 MR. VOLK: My only concern, your Honor, is
18 that Captain Maynard believed he was in the channel but other
19 than Captain Maynard's testimony on the point, I have no
20 documentary evidence to show that there was another obstruc-
21 tion in the channel.

22 THE COURT: Whether there was or wasn't, that
23 has nothing to do with this particular accident, is that
24 right?

25 MR. VOLK: I don't follow that, your Honor.

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2 THE COURT: Well, Captain Maynard's testimony, as
3 I understand it, was that the buoy being off station and he
4 was using that, that pushed him over too far to the east
5 and he hit this obstruction. Is that right?

6 MR. VOLK: That is essentially the testimony.

7 THE COURT: But there is no evidence, he didn't
8 testify that there was any other obstruction. He testified
9 about this one.

10 MR. VOLK: There was no other obstruction found.

11 THE COURT: Sure.

12 MR. VOLK: I concede that.

13 THE COURT: Sure.

14 MR. SCHULMEISTERS: By "this obstruction," you
15 mean the one outside of the channel?

16 THE COURT: I don't think there were any others
17 found either inside or outside the channel, as far as I
18 recall the evidence.

19 MR. SCHULMEISTERS: I think that is all, your
20 Honor, that I would have.

21 THE COURT: You are resting?

22 MR. SCHULMEISTERS: The Government rests.

23 THE COURT: Have you any more?

24 MR. VOLK: Nothing more, your Honor.

25 THE COURT: All right, both sides rest.

1 zb-114

2 knew that this lighthouse base was there. There is a
3 symbol in the manual of symbols which would designate it.

4 THE COURT: You say you are picking out this
5 particular one. How many thousands of possible dangers
6 do you think there are in the Hudson River? I keep reading
7 about British ships and things being found --

8 MR. VOLK: They should be marked if they are
9 wrecks.

10 THE COURT: Has the Government got a duty to ex-
11 plore the river and mark every one of --

12 MR. VOLK: If they know --

13 THE COURT: Or is their duty to provide a channel
14 that they think is reasonably clear.

15 MR. VOLK: Their duty is to promote safety, your
16 Honor.

17 THE COURT: That is a big order.

18 MR. VOLK: There was no communication here. The
19 Government, the Army Engineers knew of this hazard and the
20 people who make the charts say --

21 THE COURT: How far off the channel was this
22 thing --

23 MR. VOLK: It could have been anywhere from 0 to
24 25 feet.

25 THE COURT: I haven't read all of the papers.

1 zb-115

2 Is there any evidence how far off the channel it
3 was?

4 MR. VOLK: The fathometer they were using --

5 THE COURT: When they made the survey.

6 MR. SCHULMEISTERS: 12-1/2 feet off.

7 THE COURT: 12-1/2 feet outside the channel.

8 MR. VOLK: That is the middle point. That is
9 halfway between zero and 25. But it could have been as littl
10 as zero according to the testimony.

11 THE COURT: I am saying what it was. He says
12 12-1/2 feet off the channel, is that right?

13 MR. SCHULMEISTERS: There is testimony to that
14 effect.

15 MR. VOLK: There is also testimony from Mr.
16 Weidman that it could have been even encroaching into the
17 channel.

18 MR. SCHULMEISTERS: No, sir.

19 THE COURT: I haven't read that, so I don't
20 know.

21 Okay.

22 MR. SCHULMEISTERS: Basically, it is that survey
23 that was shown around here today.

24 THE COURT: The survey he made when he went up
25 there with the Army Engineers.

**Excerpts From Deposition of Bjorn Roal Eliassen
(Moran Exhibit 9)**

2 objections except as to the form of the
3 question shall be reserved to the time
4 of the trial;

5 IT IS FURTHER STIPULATED AND AGREED
6 that signing, certification and filing
7 shall be and the same are hereby waived.
8
9

10 BJORN ROAL ELIASSEN, having been first duly sworn by
11 the Notary Public, was examined and testified as
12 follows:

13 DIRECT EXAMINATION BY MR VOLK:

14 Q Captain, will you state your full name for
15 the record, please?

16 A Bjorn Roal Eliassen.

17 Q Where do you presently reside, captain?

18 A Seamen's Church Institute, 15 State Street.

19 Q Is that your permanent place of residence?

20 A No, that is where I stay when I am around
21 New York.

22 Q Are you planning to leave New York in the
23 near future?

24 A Yes, any time.

25 Q By whom are you presently employed?

1

2 A I am not employed. I am in the process of
3 changing employment to go south.

4 Q What is your profession?

5 A Captain of ships, pilot of ships.

6 Q Captain and pilot?

7 A Yes.

8 Q Do you have any license issued by the Coast
9 Guard?

10 A Yes, I have master's license, any ocean, any
11 tonnage.

12 Q How long have you held your unlimited master's
13 license?

14 A 1952.

15 Q Do you have any master's license issued by any
16 other government?

17 A Norwegian master's license for any tonnage,
18 any ocean.

19 Q When did you receive your master's license from
20 the Norwegian Government?

21 A In 1944.

22 Q How long have you been going to sea?

23 A Since 1935.

24 Q And did you attend any nautical school in Norway?

25 A Maritime College in Tonsberg, Norway.

1

2

Q In October 1973 by whom were you employed?

3

A Morania Oil Tanker Corporation.

4

Q And what was your job with Morania?

5

A Alternative captain one week and mate the

6

next week.

7

Q On the night of October 17/18, 1973 what was your job with Morania?

A On that night at approximately ten minutes

10

before midnight I relieved alternate captain Joseph

11

McConnell approximately at Coeymans in the Hudson River

12

in the channel.

13

MR VOLK: I would like to have

14

this navigation chart No. 284 marked

15

for identification as Moran Exhibit A.

16

(Navigation chart No. 284 is marked Moran

17

Exhibit A for identification, as of this date)

18

19

Q Can you on this chart put a circle around the

20

Coeymans area where your vessel was when you took over

21

the watch about ten minutes before midnight?

22

(Witness complies)

23

MR VOLK: With the permission of

24

counsel I will draw a leader out from it

25

and mark its position "A".

1

2

3

Q What were the weather conditions when you relieved the watch on that night?

4

A A dark clear night, very - well, almost calm.

5

Q Almost calm?

6

A Almost calm.

7

Q Was wind a factor?

8

A No, wind was no factor for me.

9

Q What was the state of the tide?

10

A The tide was ~~ebbed~~.

11

Q What vessel were you on?

12

A I was on the MORANIA self-propelled barge,

13

and the number is 300.

14

Q Can you describe the barge?

15

A It is a regular barge type build with a bow,

16

flattened bow (indicating).

17

Q Raked bow?

18

A Raked bow.

19

MR VOLK: Using his hand to describe

20

the type of bow.

21

A (Continuing) She has twin engines 1700 horse

22

power together.

23

Q Double horse power?

24

A Double horse power.

25

Q In other words, each one was 850?

1
2 A Each one was 850, that's correct; and she
3 steers by turning the propellers around, Mary Treguertha,
4 that's the name of that kind of steering gear.

5 Q Can you give us the dimensions of the MORANIA?

6 A Approximately 298 feet long, and the beam is
7 approximately 43 feet wide.

8 Q Were you loaded or light on this occasion?

9 A In water ballast.

10 Q Is the vessel equipped with radar?

11 A Yes, and the radar was working.

12 Q What speed approximately were you making when
13 you relieved the watch off Coeymans?

14 A Between, say around eight miles, eight and a half.

15 Q Did Captain McConnell stay in the wheelhouse
16 when you relieved him?

17 A He just informed me that he had heard JUDY
18 MORAN was upbound with a barge.

19 Q Did he say anything else to you that you
20 remember?

21 A No, that's the only - no, there was nothing
22 else to tell me.

23 Q Did he stay in the wheelhouse or leave?

24 A Stayed until I was familiar and then he left
25 out on the deck, I don't know where he went.

1

2 Q Did you have anybody else on watch with you
3 when you took over the watch?

4 A Yes, I had Jimmy Doering, that's James Doering,
5 and Kaare Rossavik.

6 Q And do you recall what their jobs were?

7 A Yes, Jimmy Doering is an AB, Kaare Rossavik is
8 an ordinary seaman.

9 Q Did they have any particular assignments when
10 they were on watch?

11 A Yes, Jimmy Doering was at the wheel, and
12 Kaare Rossavik on lookout.

13 Q How long was your watch?

14 A From midnight to 0600 in the morning.

15 Q Where is the wheelhouse of the MORANIA 300
16 located?

17 A All the way up forward, something like twenty
18 feet from the bow.

19 Q Can the engines on the MORANIA 300 be controlled
20 from the pilot house?

21 A That's correct, the speed RPM and the steering
22 is controlled right there from the pilot house.

23 Q Did you have a radio aboard the MORANIA?

24 A Yes, we had an FM radio, short wave FM radio.

25 Q Was it in use at the time?

1
2 A It was in use at the time. Jimmy McConnell
3 heard the JUDY MORAN calling security on it.

4 Q What is McConnell's first name?

5 A Joseph.

6 Q What channel on your radio was being used?

7 A Channel 13.

8 Q Now, thereafter, captain, did there come a
9 time when you saw another vessel either visually or by
10 radar?

11 A Yes, I saw the lights on the upcoming tow.
12 I checked in the radar and it was about two and a half
13 miles, a little over two and a half miles away.

14 Q What lights did you see?

15 A As far as I can remember I saw his red lights
16 on the barge and his red lights - no, stop that, please -
17 I saw his tow lights first, two tow lights, and I saw
18 his mast head lights, and then I saw the red lights on
19 the barge and the tugboat.

20 Q Could you tell us how the tug was towing the
21 barge?

22 A Not then.

23 Q Did you have any radio communication or any other
24 kind of communication with the upbound vessel at that time
25 or shortly after you saw her?

1

2

A At the time when I saw her, no. I was using my searchlight.

3

4

Q You had a searchlight on the MORANIA?

5

A Oh yes.

6

Q And where is that located?

7

A That is located right on top of the pilot house.

8

Q What were you using it for?

9

A Using it to look at the buoys and the shoreline on the starboard side.

10

11

MR TESORIERO: On the starboard side?

12

13

THE WITNESS: On the starboard side.

14

15

Q Could you see whether the upbound vessel had a searchlight?

16

17

A Yes, he used his searchlight and mostly as far as I can remember on the starboard side.

18

19

Q Will you tell us what happened after that?

20

A Well, I proceeded down towards buoy 35, where we were supposed to change the course after we passed, and at the time I was approximately one hundred feet from buoy 35 the tug and the barge were headed north approximately one hundred fifty feet to the east of me and in the channel as far as I could see in a good position, and

25

1

2 then I continued, changed my course, and I told the
3 deckhand to steer 301, as I usually do, and then when
4 I realized that 301 wasn't the right course, and that
5 time I said "You better come a little more to the right
6 because it seems like the buoy is inside in the channel".

7 Q Which buoy was that?

8 A Buoy 35.

9 Q Will you tell me again what course you told
10 the deckhand?

11 A That is the compass course. The true course
12 would be 198, that is 13 degrees westerly variation, so
13 you add that to that and you get 311.

14 Q Is it 211 or 311?

15 A 211; because I checked the compass on this course.

16 Q Did anything happen after that?

17 A No, I just continued on the river until about
18 ten minutes after I passed the tug and the barge I got
19 a call from the JUDY MORAN and he asked me "Do you know
20 anything about any shallow spots here in the channel".
21 I said "No, I don't know, where you were in the channel
22 there shouldn't be any shallow spots".

23 Q And did you have any conversation with him after
24 that?

25 A No. I heard him speak to other people but I

1

2 didn't listen, because I was going away and I couldn't
3 do nothing about it then.

4 Q What time, if you can tell us approximately,
5 did you pass the upbound vessel?

6 A Approximately 0010, 0015.

7 Q How was the upbound vessel towing the - the
8 tug towing the barge, if you can tell us?

9 A He was tied up in the crotch at the stern of
10 the vessel pushing.

11 Q In the crotch or notch?

12 A Well, we call it either one.

13 Q Now, can you circle on this chart the approximate
14 position of your ship when you passed the upbound JUDY?

15 A Yes, approximately.

16 Q Yes, just put a circle around the area where
17 you were.

18 A I put a circle around the buoy, somewhere just
19 about here (indicating).

20 MR TESORIERO: Is that when you
21 passed the other vessel?

22 THE WITNESS: Yes.

23 Q Now, you circled buoy 35?

24 A Yes, I was approximately a hundred feet east
25 to the east of the buoy when we met the other tow.

Eliassen direct - cross

13

Q And the other tow was where with respect to your vessel at that time?

A Approximately 150 feet to the east of me and in the deep water channel as far as I could see. I didn't even look back afterwards.

MR VOLK: I have no further questions. I will mark this second position which is a circle around buoy 35 as position "B".

CROSS EXAMINATION BY MR TESORIERO:

Q Could you tell me, at what time did you relieve Mr McConnell?

A You want me to state it again? You have it.

Q No, I don't have it.

A At approximately ten minutes before midnight on the 17th.

Q And you said you were in ballast?

A Water ballast.

Q And what would your draft be?

A Approximately nine feet six inches.

Q Both fore and aft?

A Yes.

Q Now, you stated that Mr Doering, he was at the

1

2 estimate her speed northbound?

3

A I could only see that she was going fairly
4 slow speed, maybe anywhere between five to seven miles.
5 That is hard to tell, but that is what I guess.

6

7

Q After you passed the JUDY you didn't see her
any more?

8

9

10

11

A No.

Q And you didn't hear anything from the JUDY
until about ten minutes after you had passed, is that
right?

12

13

14

A That's correct.

Q And do you know what the width of the channel
is at approximately where buoy 35 is?

15

16

17

18

A Well, it is about 400 feet deep channel there.

Q In going up and down the Hudson River during
the year had you gone up the Hudson River at night time
northbound?

19

20

21

22

23

A Many times.

Q As well as daylight?

A As well as daylight.

Q At any time going up river - in going up river
would that be on ~~some~~ propelled Morania barges?

24

25

A The same barge.

Q And what is the MORANIA 300's draft loaded?

1

2 that range is 349 as far as I can remember.

3

MR VOLK: And it goes down to
4 where?

4

5

THE WITNESS: It goes down to
6 Matthews Point where is a black can and
7 a red nun on the port.

7

8

Q That is downbound, right?

9

A Yes, but once you get to that range when you
10 come into that range at New Baltimore you have a quick
11 flashing white buoy on the starboard and a beacon, which
12 are used for upbound boats, flashing white on Howghaling
13 Island. The boats going up uses that quite a bit.
14 That is on the starboard side.

15

MR VOLK: You are pointing to the
16 range between Matthews Point and New
17 Baltimore.

17

18

Q Were you pointing to the range or to the white
19 light?

20

A I don't understand you.

21

Q For the upbound boats?

22

A You asked me for the lights, didn't you?

23

Q Right.

24

A So you have a beacon here that ships down here
25 looks at when they come in that channel (indicating).

1

2 years - well, all over the Lakes for fifteen years.

3 Q Nothing on the Hudson River?

4 A No.

5 Q I believe you testified that as you were coming
6 near buoy 35 you noticed that she was a little inside the
7 channel? Is that your testimony?

8 A No.

9 Q In connection with buoy 35 what was your
10 testimony?

11 A When I was approximately a hundred feet east
12 of buoy 35 I met a tug pushing a barge approximately
13 a hundred fifty feet in my opinion to the left of me
14 passing port to port and on the east side of me in the
15 channel.

16 Q Did you exchange any whistle signals with him?

17 A We used searchlights.

18 Q The question is did you exchange any whistle
19 signals?

20 A No, we did not, we used searchlights to signal.

21 Q How did you signal with the searchlights?

22 A I show where I am and he shows where he is.

23 That is the customary thing to do when we pass each other.

24 Q Did you talk to him on the radio?

25 A No, not until later when he called me, about

1

2 Q On which course were you when you met the
3 JUDY?

4 A At the time when I met the JUDY I wasn't
5 exactly steering. You want to know what the course
6 is coming down? I wasn't on that course.

7 Q No, let me ask you, if you will look at this
8 chart. North of buoy 35 the channel seems to have one
9 course whatever that may be?

10 A Yes.

11 Q And south of 35 you have another course?

12 A That's right.

13 Q My question is had you changed that course?

14 A I steered that course for a while, 175 true
15 plus 13 degrees westerly.

16 Q And that is the course when you are still
17 north of 35?

18 A That is 188, yes.

19 Q And when you are south of 35, that is when you
20 are on a course of 198, right?

21 A Yes, 198 true. You have to go a little by
22 there, otherwise you go on that shallow spot.

23 Q So had you changed to 198 at the time you met
24 the JUDY?

25 A No, I just told you, I have to go by that buoy

1

2 a barge length or a little more.

3 Q And that would be about three hundred feet
4 past it?

5 A That's right.

6 Q And by past it you mean south of it, right?

7 A Yes.

8 Q When you did pass the JUDY was she on an
9 exactly reciprocal course to your course?

10 Do you understand what I mean?

11 A Yes, I understand what you mean, but at that
12 time I had changed my course. I told you I had changed
13 my course because I was inside to the west of the center
14 of the channel and he probably as far as I could see was
15 heading a little towards my stern.

16 Q And on what course were you exactly at that
17 time?

18 A I don't know. I didn't see the course any more.

19 Q But it was somewhere between 175 and 198 true?

20 A No, I can't tell you that because I had gone
21 out of the course to give passage to the meeting tow and
22 I tried to estimate a hundred feet off and I saw him
23 coming by I thought about a hundred and fifty feet, and
24 at that time I was probably - I wouldn't say the course,
25 I didn't know.

1

2 Q But would it be somewhere between 175 and
3 198?

4 A It would be less than that, probably between
5 175 and 182.

6 Q And that is true?

7 A True, yes, and he probably was swinging back
8 because he looked like to me he was coming beautifully.

9 Q And you only had a magnetic compass?

10 A That's right, but I am a compass adjuster.

11 Q You had no gyro on board?

12 A No, I know what the compass is. We had no
13 gyro aboard.

14 Q When you were saying the JUDY was about
15 a hundred and fifty feet to the east of you, was that
16 the JUDY or was that her tow?

17 A The tow, the side of the tow was approximately,
18 guessing, like I guess approximately a hundred feet of
19 the buoy.

20 Q It was the tow - it wasn't the tug itself?

21 A Well, at that time I couldn't even tell, because
22 I didn't know, it was impossible, but the tugboat probably
23 was something like that to my guess. You can't see the
24 difference in the dark of a few feet.

25 Q Was the barge deeply laden? Was the barge

Excerpts From Deposition of Herbert S. Wright
(Moran Exhibit 23)

IT IS HEREBY STIPULATED AND AGREED by and among the attorneys for the respective parties hereto that the signing, sealing, filing, and certification of the transcript of the within deposition be, and the same hereby are, waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, are reserved to the trial of this action.

* * *

HERBERT S. WRIGHT, having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. VOLK:

Q Please state your name and address.

A Herbert S. Wright, 315 West 21st Street, New York City.

Q By whom are you employed?

A Corps of Engineers, New York District.

Q What is your position with them?

A Chief of Survey Branch.

Q How long have you been Chief of Survey Branch?

1
2 A Five or six years.

3 Q How long with the Corps of Engineers?

4 A Since 1929.

5 Q What are your duties as Chief of Survey
6 Branch?

7 A Conducting of all surveys required by the New York
8 District, in charge.

9 Q Does the New York District include the upper
10 Hudson River?

11 A Sure do.

12 Q What is the relationship of the Corps of
13 Engineers to the Coast & Geodetic Survey?

14 A None whatsoever that I know, except that we give
15 them all the information we acquire for the preparation
16 of charts and things like that.

17 Q Do you forward results of surveys to the
18 Coast & Geodetic Survey?

19 A Down at Rockville, Maryland, right.

20 Q For purposes of including that information
21 in navigation charts?

22 A Sure. Survey Branch, however, does not do this;
23 the Navigation Branch does this. This is not my
24 function.

25 Q But it is information developed through

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25

A Sure.

Q And does the Corps of Engineers make a survey at least once a year?

A No. They try to; it's not always possible.

Q How are these surveys conducted? What is the procedure?

A It's done by transit, Fathometer.

Q You have people working on shore?

A Yes, on location.

Q With measuring instruments?

A Transits, right.

Q With reference to certain benchmarks?

A The benchmarks would be for the elevation, which would be the tide, but these are triangulation stations which are used for the location.

Q Are there triangular stations marked all along the shore?

A Yes.

Q Are those triangular stations visible from vessels?

A No.

Q Are they flat on the ground?

A Yes, in most cases they are.

Q Does the Corps of Engineers ever establish

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vertical marks on shore to assist in surveys or checks?

A No; no reason for them.

Q Are you familiar with any request made by the Hudson River Pilots concerning the establishment of buoys or checking of buoys, say in October 1973?

A No.

Let me say one thing here, though: We do, every time we make a survey, we always locate the buoys. A buoy is not in the same position all the time because of the tide.

Q And the sinker might move?

A No; it can during the time when there is ice or something of this sort.

Q But when you make a survey for any reason, you put the buoy position?

A At the time of the survey and the time of the tide we always say "Ebb" and the number of the buoy, and we know what the stage of the tide was at that time and the buoy location. This is standard procedure with every survey.

Q When you mark the buoy on the survey, is it a mean position, or is it a position of the sinker or --

A The position of the buoy at the time it is shot optically with the transit.

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25

Q Are you senior to the Chief of Survey in the Albany office?

A Well, there is no Chief of Survey there, actually.

Q Would any surveying work which might be done by the Albany office come to your attention?

A Yes; occasionally it does. It depends upon what it is. If it's contract dredging and there is some specific question arises, I look over the survey and probably might request them to do it over or "This doesn't look quite right," or something of this sort.

Q Who is in charge of the Albany office?

A A Mr. Rosell.

Q Would you describe the kind of check you perform when you do it once a year to see if the channel is that depth and proper width?

How do you perform that?

A We run Fathometer ranges back and forth across the river.

Q You have a boat which you use for this purpose?

A Yes, we have a boat with a transducer on it and a Fathometer, and we run cross-sections across the river sometimes every 50 feet or 100-foot intervals, from one shore to the other across the channel, and if

1
2 there is any shoals or anything developed, it shows up,
3 and this is controlled by transit ashore.

4 Q Do you do this as a matter of routine or
5 when you are told there might be an obstruction there?

6 A No; this is routine; it comes under maintenance.

7 Q Do you perform the same kind of survey when
8 you are told there might be an obstruction in the area?

9 A No.

10 Q Then what do you do?

11 A Then we sweep.

12 Q What is the difference between sweeping
13 and Fathometer survey?

14 A With the Fathometer you run sections across at
15 right angles to the channel every 50-or 100-foot interval.

16 If you sweep with a Fathometer, you have
17 multiple transducers going into one Fathometer in
18 parallel, and this gives you a complete coverage of
19 25 foot of the bottom, and you run these 25 foot apart,
20 so there is no possible chance of missing anything on
21 the bottom. In fact, we overlap a little.

22 Q So that with the routine survey you have
23 a single transducer; is that correct?

24 A Yes.

25 Q Hooked up to a single Fathometer, and you

1
2 THE WITNESS: You are talking about
3 November 2nd?

4 MR. VOLK: Yes.

5 THE WITNESS: A small, 17-foot boat,
6 aluminum hull.

7 BY MR. VOLK:

8 Q How did you happen to conduct that sweep on
9 November 2nd? What led you to do that?

10 A We got a request from Navigation.

11 Q From the Navigation Department or Division
12 of the Corps of Engineers?

13 A Right. And we were going to have Albany do it,
14 and it just happened this day I was going up to Albany
15 for something, so I met them at Cocksackie Yacht Club.
16 I met them up there and went out with them.

17 Q Who is "they"?

18 A The Albany people, Mr. Weidman and his two assis-
19 tants, or transit men, and a Captain Allen and a Captain
20 Maynard.

21 Q An Earl Allen, was it, from Moran?

22 A Yes, that's right. They, incidentally, were
23 aboard the vessel the entire time.

24 Q So, you had the two Moran people and two
25 from Albany?

1

2

A Three from Albany and myself.

3

Q And yourself?

4

A Yes.

5

MR. SCHULMEISTERS: Not all on the boat?

6

THE WITNESS: No, not all on the boat.

7

MR. VOLK: I see.

8

Q Who was ashore making the transits?

9

A I don't recall their names actually; I will have
10 to find out.

11

Q How many people were in the boat?

12

A Two.

13

Q And who was in the boat?

14

A Mr. Weidman and myself.

15

MR. SCHULMEISTERS: And Allen and Maynard?

16

THE WITNESS: Yes; they were observers.

17

Q Four people in the boat?

18

A Yes.

19

Q Just along as observers, you say?

20

A That's right.

21

Q Do you know how the navigation branch

22

received this request?

23

A I do not.

24

Q The survey was made on November 2, 1973?

25

A Yes.

1

2

the line from someone who had been there before him.

3

MR. SCHULMEISTERS: My objection to hearsay

4

remains so.

5

Q Where did this conversation take place?

6

Was it in your office in New York?

7

A No; I think we talked about it when we were out

8

in the field, in the boat.

9

Q On November 2nd?

10

A Probably.

11

Q Was Captain Allen or Maynard present when

12

this conversation was going on?

13

A I don't know. I don't know when it occurred,

14

actually.

15

Q You think it was on November 2nd?

16

A Yes, but I don't know if it was when they were

17

aboard or when we were alone or when the conversation

18

occurred.

19

Q Now, you say you met up at Cocksackie?

20

A Yes, at the yacht club.

21

Q What time?

22

A It seems about eleven.

23

Q Did the whaler come down from Albany?

24

MR. SCHULMEISTERS: I object. I think

25

he said it was an aluminum boat.

1

2

MR. VOLK: An aluminum boat?

3

THE WITNESS: Yes; they brought it down,

4

I believe, on a trailer.

5

BY MR. VOLK:

6

Q Is it in fact a whaler?

7

A No.

8

Q How big a boat is it?

9

A About 17, 18 foot.

10

Q Will you describe how the transducers were

11

fitted to the boat?

12

A How? They were on outriggers.

13

Q By "outrigger" do you mean a pole that

14

extends vertically from the side of the boat?

15

A Horizontally.

16

Q Horizontally?

17

A Yes.

18

Q How many feet is it between each transducer?

19

A About 4.8.

20

Q Does that include the width of the boat?

21

In other words, the two inner transducers

22

are 4.8 feet apart?

23

A Yes, gunwhale to gunwhale.

24

Q And the two others are 4.8 feet further out?

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A Right.

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Q What were the weather conditions on that day, November 2nd?

A Good.

Q Was the water calm?

A Yes.

Q Were the conditions ideal for establishing or making a sweep of this kind?

A Beautiful.

Q What shore did the transit team work from?

A One from each shore.

Q You had one man on each shore?

A Yes.

Q And each man is equipped with what kind of equipment?

A Transit and a radio and a tide gauge. One man on one shore had a tide gauge to give us the tide as we worked.

Q Is that portable?

A A tide staff that you fix to a dock.

Q Tell us how the movements of the vessel are coordinated with respect to the men ashore with the transits.

In other words, what kind of information passes back and forth between them?

1
2 A When you start a run you give a flag that gives
3 you the location of the run. There was one man on the
4 transit who keeps the boat on line, and he talks you
5 right down the range, and you give a flag, say, every
6 20, 30, 40 seconds, and he shoots an angle to the boat,
7 a specific point on the boat, and this gives you the
8 actual location as you progress down the range.

9 MR. SCHULMEISTERS: Read that back.

10 (The answer was read by the reporter, as
11 above recorded.)

12 BY MR. VOLK:

13 Q Is one man on a transit that is in line
14 with the path of the boat?

15 A Right.

16 Q And the other man is taking angles more or
17 less perpendicular to the path of the boat?

18 A We call that cutting.

19 Q Right. So, if the boat gets off line, the
20 man who is looking down the line of travel will call
21 to the boat and say either "Come right" or "left"?

22 A "You are a foot off to port" or "to starboard."

23 Q And the other man, does he communicate with
24 you at all?

25 A Yes. We will say, "Mark," and he will answer

1

2

back, "Mark," which means he has heard it.

3

4

Q Does he pass the angles back to you, or does he just record them?

5

A No; he records them.

6

7

Q Are the angles recorded on a chart or a piece of paper?

8

A A book, a field book.

9

10

MR. SCHULMEISTERS: We have one. We just happen to have one here.

11

12

Q Do you have with you the field book that was used on this occasion?

13

14

MR. SCHULMEISTERS: Do you want to get the page?

15

16

I produce field book 60-40, and this seems to be Page 44.

17

18

MR. VOLK: Can we have it marked?

19

20

I will agree to accept copies of it.
MR. SCHULMEISTERS: That's the only page dealing with this.

21

22

THE WITNESS: No; there's about eight.

23

24

BY MR. VOLK:

25

Q Is the field book kept by both men ashore

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or just one?

A Just one unless we are using two cuts, which sometimes we do.

Q Now, on this occasion did you use one cut or two cuts?

A No; one. We only use two where we get into a place where they are quite a way away, and if one man misses, the other man picks it up.

Q So, on this particular occasion, November 2, '73, only one man was reading angles, or cuts, as you call them?

A That's right.

Q And he reads those when you drop the flag every 40 seconds?

A 20, 30, 40, whichever it might be, right.

Q Now, you have handed me a book, and I see, on Page 44, on the one opposite a number of runs, Run 1, 2, 3, 4, and 5; what does that mean?

A That means that you only cover 25 feet of channel on a run, so to cover the entire channel we had to do quite a few runs.

Q What time did you begin your first run, do you know? Is that recorded?

A I think it's one o'clock. I can tell by the

1
2 chart.

3 Q What time is Run 1?

4 A 1:09.

5 Q And when did you complete your runs?

6 A 2:20.

7 Q How many runs did you make altogether?

8 A Eight.

9 MR. SCHULMEISTERS: For the record, the
10 witness was referring to the run records.

11 Q What do you call those documents?

12 A The Fathometer charts.

13 Q Are these the charts that were actually
14 developed on the boat as you were moving up and down the
15 river?

16 A Yes.

17 Q Were these runs -- by the way, were they
18 made parallel to the thread of the channel or across?

19 A Parallel.

20 Q Do you sometimes make sweeps across channel?

21 A Very rarely. It's very difficult to keep a boat
22 on line. You can go -- it is easier to go with or
23 against the current and keep the boat straight than it
24 is to go across the current because you would get a yaw
25 on the boat, and your rig would not be parallel.

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Q Who did the plotting of these angles?

A They did in Albany.

Q Did you have anything to do with that?

Did you check the plottings?

A No.

Q You said there were about eight pages in this book that had information with reference to that November 2 survey?

A No; this survey carried on into November 7. I was only there the 2nd. This is the 5th, and this is the 5th, and this was the 7th. I was not there during this period.

Q Was the boat making surveys on the 3rd, 4th, 5th, 6th, and 7th, or just the 2nd and the 7th?

A It looks here like the 2nd and the 5th was the next time they went up there. So, evidently, it must have been over a weekend. I don't know what they did.

Q The 2nd and then the 5th, and you said something about the 7th?

A And then the 7th.

Q Do you know why they came back on the 5th?

A Yes; we -- I decided I wanted the whole damn thing done.

Q What do you mean by "the whole damn thing"?

1
2 A The whole channel.

3 Originally we were supposed to look for an
4 obstruction. We didn't find an obstruction.

5 Q In the channel?

6 A So I had the whole channel covered, as much as
7 possible, to be positively sure there was nothing there.

8 Q Who told you there was an obstruction in
9 the channel?

10 A Navigation Branch.

11 Q Did Captain Maynard mention an obstruction
12 in the channel when he was with you that day, November 2,
13 1973?

14 A Sure; that's what they came up for. He came up
15 not only to observe but to show me where he hit.

16 Q Did he do that?

17 A Yes.

18 Q What did you find there?

19 A Nothing.

20 Q I will show you the navigation chart.

21 MR. VOLK: Mark this as Moran Exhibit 1.

22 MR. SCHULMEISTERS: Again?

23 MR. VOLK: Make this 12.

24 MR. SCHULMEISTERS: This is a November '73
25 edition.

1
2 MR. VOLK: Corrected as of October--
3 U. S. Department of Commerce, corrected as of
4 October 18, 1973.

5 MR. SCHULMEISTERS: This obviously is a
6 different print from the one that was in existence
7 at the time.

8 MR. VOLK: Well, it's the 24th Edition of
9 August 11, 1973.

10 MR. SCHULMEISTERS: Yes, but it's obviously
11 printed November '73.

12 MR. VOLK: I read it as "Second Edition,
13 August 11, 1973."

14 MR. SCHULMEISTERS: Eleven -- I will have
15 to check that.

16 (A chart was marked Moran Exhibit No. 12
17 for identification, as of this date.)

18 BY MR. VOLK:

19 Q Now, I wanted to show you this to ask you
20 what you mean by "check the whole thing"; from where to
21 where?

22 A We started from the south end of Hoteling Island
23 and went down to just below this buoy.

24 Q 35?

25 A Correct.

1

2

Q From Beacon 36, just above Beacon 36 to just

3

below 35?

4

A Channel line to channel line and the east bank.

5

Q On the eastern side?

6

A Yes.

7

Q Channel to channel?

8

A Right.

9

Q But you didn't check to the west of the

10

channel line --

11

A No.

12

Q -- on the westerly side?

13

A No.

14

Q Now, what part did you sweep on November 2?

15

A I would say roughly half the channel and outside

16

the east channel line.

17

Q Which half did you sweep?

18

A The easterly half.

19

Q From what point to what point? The same

20

points?

21

A Roughly the same.

22

Q Was that done in five sweeps or more?

23

A Eight.

24

Q And are those the sweeps that are recorded

25

in this book?

1

2

one that shot the angles?

3

4

A No; the one over here shot the angles because we were running with the channel. This man kept us on line.

5

6

Q I am not clear as to the position of the men. Were both men on the westerly side of the river?

7

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11

A No. The transit man who was doing the cut was on the west side, about midway on Reach 23. The man that was giving line to the boat was on Stuyvesant Light or a point in front of Stuyvesant Light which they use for a range point.

12

13

14

Q Which would enable him to look directly --

A Directly up the channel line and move over each time to keep the boat on line.

15

16

Q A movement of about how many feet?

A 25.

17

MR. SCHULMEISTERS: Movement by the boat?

18

19

THE WITNESS: The man, he has to move, too,

to keep the boat on line.

20

21

Q So, the man who was recording in this book was on the westerly side of the river?

22

A Right.

23

24

25

Q And the man who was keeping the boat on line, he didn't make any recordings, did he, or did he write anything down in the book?

1

2 A No. He had a book with azimuths for the channel
3 line, to set his transit, but this is all.

4 Q He didn't take any cuts?

5 A No.

6 Q Did the dropping of the white or red flag
7 have any significance to the man who was at Beacon 32?

8 A Only the last one, the red and white, which meant
9 he had to move over, but we told him by radio anyway.

10 Q Run 1, would that be in the channel or out
11 of the channel?

12 A Everything was in the channel with the exception
13 of eight. Eight was on the bank.

14 Q Eight was to the east or west of the channel?

15 A To the east.

16 Q I notice on the chart there is a notation
17 that it is tabulated from surveys by the Corps of
18 Engineers reports to March 1969 and surveys to July 1968.

19 A Yes.

20 Q What are the differences between surveys
21 and reports?

22 A This I wouldn't know. We only make surveys; we
23 don't make reports.

24 Q And it also says at the bottom, "The Corps
25 of Engineers should be consulted for changing conditions

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from Albany.

A I don't have the work sheets, if that's what you mean.

Q Let's go back.

Is it your testimony that the channel lines, as shown on this chart just produced, are in the same physical positions as the channel lines on prior charts?

A Oh, there is no question about it.

MR. VOLK: Can we have this marked as Moran Exhibit 13.

(Corps of Engineers chart was marked Moran Exhibit No. 13 for identification, as of this date.)

BY MR. VOLK:

Q You mentioned the base of an old lighthouse called Bug Island?

A Bug Island Light.

Q On this particular sweep of November 2 you found a pinnacle of rock. Is it your opinion that that was the base of the old Bug Island Light?

A I don't know.

Q Do you think it was?

A If it's more or less in the location.

MR. SCHULMEISTERS: He just answered the

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Q The physical end of the tape I have in front of me. Somebody cut it there.

A Yes, I did because I wanted this to show where we found the shoal.

Q This last run, that was No. 7?

MR. SCHULMEISTERS: Off the record.

(Discussion off the record.)

BY MR. VOLK:

Q The tape ends with an entry in your hand, I take it, "This range on east bank"?

A Yes, with an arrow pointing to this one.

Q The next one we have?

A Which is eight.

Q Up to No. 7 were all runs made in the channel?

A In the channel.

Q No. 8, where was that made with reference to the channel line?

A On the east channel line.

Q Right on the line?

A Well, from the line to 25 foot in, or rather out-- out of the channel.

Q Where was the boat physically?

A 12½ feet on the east bank.

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Q In other words, physically, the center line of the boat was 12½ feet to the east of the easterly edge of the channel?

A Correct.

Q If you were heading south, the transducer on the right, the farthest transducer, would be right on the channel line?

A Yes, right.

Q How do you know the transducer was right on the channel line?

A Because that's where the man held it.

Q What man?

A The man that's holding the line station; he holds you on line.

Q The man who was holding the line station, was that the man standing down by Stuyvesant Light?

A Yes.

Q How does he know he is on the channel line?

A Because there is a fixed point there.

Q Which fixed point?

A There is a fixed point on every one of these channel lines all the way down from Troy to New York.

Q How are these fixed points marked?

A Monumented. Could be an iron pipe, in some cases

1

2 concrete, but it's a permanent marking or permanent
3 monument, or if it isn't there is one very close to it on
4 which a man, in two or three minutes, can set up on it.

5 There are places where you can't get on the
6 channel line because of high water and things of this
7 sort, so they establish a permanent point close to it
8 in which you can set on that and reproduce the point on
9 the channel line.

10 Q In this particular instance do you know
11 whether the east channel line itself was monumented in
12 some way?

13 A Yes.

14 Q Was it monumented right on the channel line?

15 A No; they have a point right on the channel line,
16 on the Stuyvesant Light.

17 Q Did you see it?

18 A I didn't go ashore and look at it.

19 Q How do you know it's there?

20 A We know it's there; it's been established for
21 many years, I don't know by whom. Probably 75 years
22 ago these things were established.

23 Q Do you know what the east channel monument
24 is in fact? What kind of mark is it?

25 A I don't know. On Reach 23?

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Q Yes.

3

A I do not know.

4

Q Who is the fellow that was taking the transit
at that point? What is the name?

5

6

A I would have to get his name, too; I really don't
know.

7

8

Q He is the fellow that was keeping you on
line?

9

10

A Right.

11

Q Of course, the position of the channel line
is of critical importance --

12

13

A Yes, I know.

14

Q -- on the whole reading as to any obstruction,
would have to be based on whether in fact the transit
was on that channel line?

15

16

A It was on the channel line.

17

18

Q How do you know that?

19

A Because I know it was. I have enough faith in
the boys that work for me to know they know what they
are doing.

20

21

Q But the boys that are working for you, there
is only one man really responsible; that is the man with
the transit back at Stuyvesant Light?

22

23

24

A Yes; but you miss the point. The guys are going

25

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2 in year in and year out from the same points, and they
3 have descriptions of these points.

4 Q You didn't go ashore to see the monuments
5 or fixed points he was using as a reference?

6 A No.

7 Q Is there a book kept by the Corps of
8 Engineers which records the location of these monuments?

9 A Yes.

10 Q What is the name?

11 A It's a book of descriptions. It is kept in the
12 files in Albany.

13 Q Do you have a similar book in New York?

14 A Yes. It's not a book; we keep it in a card file.

15 Q Did the man who was on the transit on the
16 Stuyvesant Light have that book with him?

17 A I doubt it. I don't think so.

18 Q Does he know from memory where these monu-
19 ments are located?

20 A Yes, they sure do.

21 Q Do you happen to know when the channel line,
22 or the monument for the channel line, in this particular
23 reach was established?

24 A I have no idea.

25 Q Has it been a good many years ago?

1

2

A Yes.

3

4

Q Starting with this Run No. 8, which is from zero to 25 feet, to --

5

A Outside of the channel.

6

7

8

Q -- to the east of the channel line, assuming the transit is right on the channel line, what does that show?

9

10

The book shows you were going south, from north to south.

11

A Right.

12

Q What does that show? Will you describe it?

13

14

A Well, it -- between Flags 3 and 4 we came up on an 18-foot shoal.

15

Q There is sort of a peak there?

16

17

A Yes; it looks like a peak of rock. I couldn't say; we didn't dive on it.

18

19

Q It has the characteristics you might expect from a peak of rock?

20

A Yes.

21

Q Sort of like a mountain?

22

A Yes.

23

24

Q Had you ever surveyed this particular area before?

25

A No, never; never been there before.

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Q How far to the east of the channel line is this peak of rock?

A From zero to 25.

Q Does each transducer have its own recording pen?

A No, it does not. Occasionally you get a superimposition there, which I can show you.

Right here is the recording from one transducer.

Q You made a little peak underneath the top one?

A This is another one here, and this is another one here, as you will see, but when they merge it's very difficult to tell.

Q How far to the east of the channel line is this uppermost peak?

A Anywheres from on the channel line or -- not on the channel line, just beyond the channel line, to 25 feet over.

(Whereupon a luncheon recess was taken.)

1

2

Q How long has he been with the Engineers?

3

A I have no idea. I would say over five years.

4

Q Was he ever assigned to the New York City

5

District?

6

A No, sir. He lives in Albany, works out of

7

Albany.

8

Q So, when you worked with him before it was

9

when he was working in Albany?

10

A He was working out of Albany. I usually worked

11

with him on per diem jobs that might have been in

12

Vermont or might have been in Massachusetts.

13

Q How many previous occasions did you work

14

with him?

15

A Probably three or four.

16

Q On those occasions was he using the transit?

17

A Yes.

18

Q You came back from lunch with this informa-

19

tion. Can you tell us where you received this infor-

20

mation?

21

A I called Albany.

22

Q Are those men still in the Albany branch?

23

A Yes.

24

Q Now, getting back to the Fathometer roll

25

for Run 8, which has now been marked Moran Exhibit 16,

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before lunch we were talking about this peak or pinnacle which shows on this tape recording. The highest point of the pinnacle, as read on the range scale, from zero to 25, would indicate it was about 17 feet below the surface of the water?

7

A With minus 1.3 correction on the tide.

8

Q What would that make it?

9

A Around 18.

10

Q 18 feet?

11

A Yes.

12

13

14

Q Now, that highest point on the pinnacle could be anywhere from zero feet to 25 feet east of the easterly channel edge?

15

A Right.

16

17

Q Now, you said earlier that there was some overlap?

18

A Yes.

19

20

21

Q So, it is possible, isn't it, that that pinnacle could have in fact been somewhat to the west of the easterly edge?

22

23

A No, because the range before this showed nothing, and that was also in the overlap.

24

25

Q When you speak of "overlap," how many feet are involved?

1

2 A Two, three.

3 Q Was this Run 8 the last one you made on
4 that day?

5 A The last one I made.

6 Q Why did you make no further runs on that
7 day?

8 A Well, it was late.

9 Q What time was it when you finished Run 8?

10 A About 2:20, 2:30.

11 Q You could have made some more runs?

12 A We could have, if it was necessary, but I didn't
13 feel it was necessary.

14 Q Did you feel you had found the object --

15 A I did.

16 Q --whatever it was --

17 A Yes.

18 Q -- that caused this problem?

19 A Yes.

20 Q And you feel, in fact, this pinnacle of
21 rock was what in fact the barge hit?

22 A I do.

23 There is one thing I do want to say: I was
24 not there when the accident occurred.

25 Q Of course, we understand.

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A All I can say is on November 2nd the channel was clear, but the first range to the east of the channel, east channel line, had a shoal.

MR. SCHULMEISTERS: Read that back.

(The answer was read by the reporter, as above recorded.)

MR. SCHULMEISTERS: "Outside of the channel"; I want that inserted.

MR. VOLK: No; it was recorded correctly. He didn't say "outside of the channel"; he said, "east of the east channel."

THE WITNESS: East of the east channel.

BY MR. VOLK:

Q Had you known of the existence of this pinnacle of rock before November 2, 1973?

A No.

Q Had you heard of it from anybody?

A No.

Q Had you personally ever swept this area before?

A No.

Q Do you know when this area had last been swept before November 2, 1973?

A No.

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Q Have you made any attempt to find out when it was swept?

A No.

MR. SCHULMEISTERS: We do have the prior survey, if you want a copy of that.

I am talking about sweeping, which is a different thing than surveying.

A It's a survey. It's a different thing than a sounding survey.

Q I am talking about sweeping now.

A I have no idea.

Q Do you know when the last sounding survey was made of this area prior to November 2, 1973?

MR. SCHULMEISTERS: No; I think that's a sweep survey, not a sounding survey.

THE WITNESS: That's a condition survey (examining document).

MR. SCHULMEISTERS: This is only what the New York office records show.

THE WITNESS: This is the area.

BY MR. VOLK:

Q What is the date of this?

A '63.

MR. VOLK: May we have this marked, please,

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Moran Exhibit 17.

(Condition survey report was marked Moran Exhibit No. 17 for identification, as of this date.)

BY MR. VOLK:

Q Counsel has produced a chart which has now been marked Moran Exhibit 17. What is that?

A This is a condition survey which probably -- well, the soundings were taken 6/24/63 and 7/9/63, Reach 23.

Q I point to a spot where there are some contour lines, and it shows 20 feet. Is that the pinnacle of rock which was found on Sweep 8?

A Yes, sir.

Q "Yes, sir"?

A Yes.

Q Can we mark that with an arrow, and I will label that "A," in red.

How many feet does this show the pinnacle to be to the east of the easterly edge of the channel?

A About 18 feet.

Q Now, was this survey made for transponders such as you were using?

A No; this was a single transducer, and it was cross-ranges across the channel every hundred feet.

1
2 A No, it is not. I don't know; I didn't search
3 through the records enough to find out.

4 MR. VOLK: I call for the production of
5 all -- in my notice of deposition -- survey reports,
6 survey charts, counsel. Do you know if there are
7 any subsequent surveys of this area?

8 MR. SCHULMEISTERS: This is the one we found
9 this morning. We looked for it, to see if there
10 were prior ones, and I don't know how far you want
11 to go back.

12 I have some surveys going back to 1902. I
13 am sure you are not interested in those.

14 But Albany would have to be checked to see
15 if there are others, or maybe a further search of
16 the New York office.

17 BY MR. VOLK:

18 Q Do you know whether the information which is
19 shown on this survey marked Moran Exhibit 17, and par-
20 ticularl; the pinnacle as shown here, marked "A,"
21 whether that information was transmitted to the Coast
22 and Geodetic Survey?

23 A I would say yes. I don't know if it was.

24 Q But it should have been?

25 A Everything is normally, but as I say, I don't

1
2 handle it.

3 Q Certainly this pinnacle is the type of thing
4 you would expect to be transmitted to the Coast and
5 Geodetic Survey?

6 A Yes.

7 Q Would you expect such a pinnacle to be
8 shown on charts published by the Geodetic Survey?

9 A Yes.

10 Q I show you this Coast and Geodetic Survey
11 chart. Do you see it anywhere on there?

12 This is Moran Exhibit 12.

13 A Yes.

14 Q Could you show it to us?

15 A Yes; here (indicating).

16 Q You see a number?

17 A Right.

18 Q And the number doesn't particularly indicate
19 a pinnacle?

20 MR. SCHULMEISTERS: Let the record show
21 the witness pointed out numbers 17 and 19.

22 Q That doesn't necessarily mean a pinnacle of
23 rock, does it?

24 A It means there were soundings at that point.

25 Q It doesn't mean a pinnacle of rock?

map, the Coast and Geodetic chart.

Q Did you have any conversations with either Captain Allen or Captain Maynard as to whether or not Buoy 34 was found off station on November 2?

A No, I did not.

Q I show you a survey chart which has been previously marked as Government Exhibit H for identification (Maynard) and ask you if you could tell me what that is.

A The chart?

Q Yes.

A It's a duplicate of it.

Q Moran 13 is, the information contained on Moran 13, the same as this chart which is Defendant's Exhibit H?

A Everything with the exception of the nomenclature on the Red Nun buoy, which on this chart is 32, but actually it is 34.

Q Do you know who made that error?

A Draftsman's error.

Q And it was the same draftsman you mentioned earlier?

A Yes.

Q Do you know who filled in the red here?

1

2

A I did.

3

4

Q What was the occasion for your filling in the red?

5

A To show this was where the shoal was.

6

Q When did you fill in that red point?

7

8

A I wouldn't know the date; shortly afterwards, after the maps arrived in New York. They had been filed in Albany. The following week.

9

10

Q I notice also the nomenclature for Buoy 35 was changed. What was the reason for that?

11

12

Not the nomenclature itself but the positioning.

13

14

MR. SCHULMEISTERS: The position of the buoy.

15

16

MR. VOLK: Not nomenclature.

17

18

MR. SCHULMEISTERS: I am sorry.

19

A Yes.

20

Q Do you know why it was done?

21

A No.

22

Q Do you know who did it?

23

A No.

24

Q I show you a series of sheets of paper,

25

Sheets A, B, C, D, and E, Sheet B having previously been

(Discussion off the record.)

MR. VOLK: Back on the record.

BY MR. VOLK:

Q We were discussing the order in which the sweeps were made, Mr. Wright, and is it correct to say that the first sweep that you made on November 2 was in the area shown as A-1 and A-2?

A Yes.

Q 375 to 400 feet?

A From the west channel line.

Q From the east channel line?

A West.

Q The next sweep was Run 2, would that be east or west of A-1, A-2?

A That would be this one, west.

Q And that was 375 to 350 feet from the west channel line?

A Yes.

Q And Run 3 was west of that, 350 to 325 feet from the west channel line?

A Right.

Q I see.

So, in other words, this does establish that the channel was 400 feet wide at that point?

1
2 A That's right.

3 Q So that the first sweeps were back and
4 forth, progressing from east to west?

5 A That's right.

6 Q And Run 7 was 250 to 225 feet west of the
7 east channel line?

8 A Right.

9 Q And from there, Run 8, you went all the way
10 back to the east channel line?

11 A Yes, because we found nothing, it was clear, so
12 we started to go over to the east of the channel line.

13 Q And that is recorded in this book, a copy
14 of which is marked Moran Exhibit 14, I believe. It
15 shows minus elevation, to minus 25?

16 A Right.

17 Q That means?

18 A Zero center line to minus 25.

19 Q Now, do these five portions of tape which
20 I have shown you, with the marks on it and which corre-
21 spond to A, B, C, D, and E, do they purport to have
22 information, or do they show information which was
23 developed on November 2?

24 A The first two do, A and B.

25 Q And the others were developed on

1
2 to Moran 16.

3 MR. VOLK: One section of it. It doesn't
4 purport to present the whole sweep, just one
5 portion of it.

6 Can we have those marked as a group?

7 Clip them together.

8 (Five sections of tape were marked Moran
9 Exhibit No. 18 for identification, as of this
10 date.)

11 MR. VOLK: What is this?

12 MR. SCHULMEISTERS: I have an original and
13 a copy.

14 MR. VOLK: Please mark this survey chart
15 as Moran Exhibit 19.

16 MR. SCHULMEISTERS: Let the record show
17 we have produced the original and this is a copy
18 of a survey dated November 7, 1973.

19 (Survey chart dated November 7, 1973, was
20 marked Moran Exhibit No. 19 for identification,
21 as of this date.)

22 BY MR. VOLK:

23 Q Mr. Wright, what is this chart, Exhibit 19?

24 A This is practically the same as the other chart,
25 with the exception that it's blown up on a scale of one

1
2 to 5,000, or replotted to a scale of one to five --
3 hundred; I'm sorry.

4 Q When you say "the same as the other chart,"
5 you mean the one marked Moran 13?

6 A That's right, with the exception it doesn't show
7 anything in the channel, but it does show the shoal that
8 was found on a larger scale.

9 MR. SCHULMEISTERS: Isn't that a sounding
10 done on the 7th?

11 THE WITNESS: I don't know. I would have
12 to check the record.

13 MR. VOLK: Do you want to look at the
14 transit book?

15 MR. SCHULMEISTERS: O.K.; this is the 5th,
16 and this is the 7th.

17 MR. VOLK: Now I am asking him, the
18 witness, to tell us where the information for
19 this chart, Exhibit 19, was derived.

20 THE WITNESS: This came during surveys of
21 the 5th and also the 7th.

22 BY MR. VOLK:

23 Q What was the purpose of this particular
24 chart?

25 A To complete the survey. The other one wasn't

1
2 completed enough, so we wanted to complete the whole
3 thing; also to closer define the location of this.

4 Q The pinnacle or rock?

5 A You say "pinnacle or rock"; I have no idea. It
6 could be a lump of mud as far as I know. We never dug
7 down. We never probed.

8 MR. SCHULMEISTERS: Do you want to mark
9 the 5th and the 7th?

10 MR. VOLK: We will mark the Fathometer
11 tapes for November 5 as Moran 20.

12 MR. SCHULMEISTERS: And the Fathometer
13 tape for November 7, which we also produced, as
14 Moran 21?

15 MR. VOLK: All right, another set of
16 Fathometer readings.

17 (Fathometer tape for November 5th was
18 marked Moran Exhibit No. 20 for identification,
19 as of this date.)

20 (Fathometer tape for November 7th was
21 marked Moran Exhibit No. 21 for identification,
22 as of this date.)

23 BY MR. VOLK:

24 Q Were the Fathometer readings for November
25 the 5th and 7th, which are now marked as Moran Exhibits

survey, November 2, 5, and 7?

MR. SCHULMEISTERS: We have one on which
Mr. Wright has done something -- which is really --

THE WITNESS: Nothing more.

MR. SCHULMEISTERS: It's a copy of --
Exhibit 13, with the runs marked on it.

BY MR. VOLK:

Q Did you prepare this?

A The blue one is the one I was involved with.

Q That is Run 8?

A Run 8, the one I found the shoal on.

Q Did you make the colored mark?

A Yes.

MR. VOLK: Could we have that marked
Exhibit 22, a composite with coloring and measure-
ments made by Mr. Wright.

(Composite chart with markings made by
the witness was marked Moran Exhibit No. 22 for
identification, as of this date.)

MR. VOLK: Any other charts or diagrams?

MR. SCHULMEISTERS: Survey charts?

We have a chart on which Mr. Wright -- there
are some marks on the channel line and --

MR. VOLK: Could we have this marked?

1
2 Q And you made the measurement up here on 26,
3 to the channel line, and that is 175?

4 MR. SCHULMEISTERS: On this chart?

5 MR. VOLK: Yes.

6 Q What was the reason for your preparing this
7 chart?

8 A To make it a little clearer to us, in case we
9 came in and there was a discussion as to exactly which
10 range we found the shoal on.

11 MR. SCHULMEISTERS: I can mention I showed
12 Mr. Wright your notice to produce, and he prepared
13 that on his own, without my asking or inquiring
14 about it.

15 THE WITNESS: I thought it would be a help
16 to clear it up a little bit.

17 Q Did you prepare it at the request of
18 counsel?

19 A No.

20 Q You prepared it without being requested by
21 counsel?

22 MR. SCHULMEISTERS: I didn't ask him to
23 prepare it, but I showed your notice of deposition,
24 and after he saw that, after I arranged to take
25 his deposition, I imagine he did it after that.

1
2 EXAMINATION BY MR. SCHULMEISTERS:

3 Q Mr. Wright, I believe you earlier testified
4 that when you made the sweep on November 2, 1973, with
5 you in a boat was Captain Maynard?

6 A Right, and Allen.

7 Q Did Captain Maynard at any time tell you what
8 was the position where he thought he had grounded?

9 A Yes. When we first went out I said, "Can you
10 show us just about where you think this shoal is?"

11 And he gave me right in here (indicating).

12 Q Can you please mark--with this black pen,
13 can you mark the area --

14 A Approximately.

15 Q -- where it was he grounded?

16 A Somewhere in this area.

17 MR. SCHULMEISTERS: That mark is made on
18 Moran Exhibit 22.

19 MR. VOLK: He has made a round circle with
20 some stripes in it in black.

21 MR. SCHULMEISTERS: Let me draw a line
22 from it and label that with a letter "B."

23 Q In connection with Moran Exhibit 12, Mr.
24 Volk asked you to point out the shoals here on this
25 chart, C & GS Chart 284. Would you please mark those

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two shoals on this chart?

MR. VOLK: I think he pointed to the
figures No. 17 and 19.

THE WITNESS: Yes.

MR. SCHULMEISTERS: Please draw a line
through them and label them with the letters,
I guess, "B" for the 19 and "C" for the 17 on
Exhibit 12.

BY MR. SCHULMEISTERS:

Q These depth marks of 19 feet and 17 feet
are outside of the channel as shown on Exhibit 12?

A Right.

Q That is, to the east; right?

A To the east.

Q Before we go further, these shoals that
you marked with the letters "B" and "C" on Exhibit 12,
are they the ones that appear on Exhibit 19?

A Roughly.

Q Could you please label them also on Exhibit
19, Moran 19, with the same letters, "B" and "C" corre-
spondingly?

These shoals are outside of the channel?

A Right.

Q Now, on Exhibit 19, how far is the 18-foot

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shoal from the east channel line?

A Somewhere -- 25 feet.

Q That is, the nearest point to the channel line is 25 feet?

A That's where the 18 is.

Q That is 25 feet to the east?

MR. VOLK: But that's not the nearest point.

Q The nearest point of that circle to the channel?

A That's 20 feet.

Q For something to hit that shoal, he would have to be 20 feet outside the channel; is that correct?

A It depends what he was ^{drawing} doing.

If this is 35 feet, now, 34 feet in here, and if he was drawing 23, he would certainly hit right on the channel line.

Q But the point of 18½ feet or so, that would be 20 feet away?

A That's right.

Q On Exhibit 17, one of the shoals was marked as "A." What was it marked on the other chart we just did?

A "B."

**Excerpts From Deposition of Raymond P. Weidman
(Moran Exhibit 28)**

to by the witness being examined before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to form, are reserved to the time of trial.

RAYMOND F. WEIDMAN, (12 McCombe Drive, Delmar, New York.) called as a witness having been first duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY MR. VOLK:

Q By who are you employed

A U. S. Army Corps of Engineers.

Q How long have you been working with the Engineers?

A Thirty-three years.

Q What is your present position?

A Civil Engineering Technician.

Q And your office is in Albany?

A Troy. Albany Field Office, but it is in Troy.

1

2 Q Are you in charge of the Albany Field Office?

3 A No.

4 Q Who is in charge?

5 A Mr. Rozele.

6 Q What are your duties in the Albany office?

7 A Well, I act as chief of survey party and
8 sometimes lay out the work for a party to do when I am
9 not with them. In charge of surveys more or less.

10 Q Are you talking about nautical surveys?

11 A Yes.

12 Q Does the area of your responsibility include
13 the upper Hudson River?

14 A Yes.

15 Q Specifically, reach 23 south of Hoteling
16 Island, is that within the responsibility of your
17 office?

18 A Yes, it is.

19 Q What duties do you perform, if any, with
20 regard to the maintenance of the waterway in reach 23
21 south of Hoteling Island?

22 A Well, periodically, we make a condition survey
23 and if we find shale in this condition survey, if we
24 think they need to be developed, that they warrant it
25 we go out and develop them, to see if there is enough

shole there to warrant dredging the channel to the required depth.

Q How ~~long~~^{often} do you make this condition survey?

A We are in the process of making one right now. We started last year from Troy and we were going right to Kingston.

Q Do you try to make such a survey periodically within a certain number of months or years?

A Years. Generally two or three years I try to make one. Its -- I don't really know since we have made the last one.

Q When was the last condition survey of reach 23 south of Hot Spring Island prior to this one you are now engaged in, do you know?

A No. I don't really know. I will be very honest about that. I don't know the date.

Q Could you give us the year?

A No, I can't. I can't give you the year.

Q How long have you been working out of the Albany office or the Troy office?

A The Albany field office?

Q Yes.

A Thirty-three years.

Q How long have you had anything to do with

1
2 surveying Reach 23 south of Hoteling Island? Did you
3 participate in surveys as long as thirty-three years?

4 A Thirty-three years. When I say thirty-three
5 years -- yes. In 1929 Captain Tracy was in charge.
6 I did survey there and I was in his party.

7 Q Do you consider you know those waterways
8 fairly well?

9 A When you say do I know them fairly well do you
10 mean the channel lines? If I was to go there in a
11 boat and be able to say the channel line is under us?

12 Q Yes. Are you familiar with the area
13 physically?

14 A I am familiar with the area, yes.

15 Q You have been out there many, many times?

16 A Many, many times, yes.

17 Q When did you first become aware of the fact
18 that there had been a grounding in the area of Reach 23
19 which occurred in October, 1973?

20 A Shortly after the grounding. It was in November
21 that we went down. We generally -- when we get any
22 reports we get to it just as soon as we can.

23 Q How did you happen to get notice of this
24 particular grounding?

25 A The New York Office called us up. I guess it

1
2 was reported to the New York office.

3 Q Do you know the name of the barge that was
4 involved?

5 A No, I don't.

6 Q Were you given any information from the
7 New York office as to where the grounding was supposed
8 to have taken place?

9 A No. But the pilot of the tug and some other man
10 came up with us when we made the survey and he showed
11 us where he thought he hit south of the light.

12 So we said he was on the east side so
13 that day, we covered the east half of the channel and
14 we didn't find any and I said there is a possibility
15 that he might have hit something out of the channel.

16 One other time a boat hit at Kingston and
17 reported hitting at Kingston. Now, I went down and we
18 swept it clear. The following year, the same pilot
19 reported hitting in the same place. We went down
20 again and it was clear. So I decided to take some
21 runs out of the channel.

22 MR. SCHULMEISTERS: You are talking about
23 Kingston?

24 THE WITNESS: Yes.

25 A I started to run out of the channel. Lots of

1
2 water. As much as was in the channel, but they put a
3 cable crossing across there. And the channel they
4 apparently got it down to the proper depth but out of
5 the channel I won't swear that it was the cable company,
6 but this is what I think it was.

7 They had to dig a trench to lay the cable.
8 There is a big pile of dirt and it laid ~~there~~ and you
9 could see that it was chopped off and in deep water.
10 I think this pilot was out of natural water and he was
11 also too far to the west.

12 Q You are talking about the pilot that was
13 involved in the grounding at Kingston? *meaning Houghtaling*
14 A Yes. This is what I decided to do up there. *island*
15 Maybe it hit something that is outside of the channel.

16 Q Let's get back to that. Tell me, when the
17 captain or pilot advised you of the grounding, did he
18 show you the place in the channel where he thought it
19 had occurred?

20 A He thought -- yes.

21 Q Did he think it was in the channel?

22 A Yes.

23 Q Did the spot that he pointed out to you
24 indicate that it was in the channel?

25 A He indicated it was in the channel, yes.

Q Was it on the easterly side or the westerly side?

A Easterly side.

Q In your thirty-three years of experience in this area, have you ever heard of any other vessels grounding at or near the spot?

A Yes, I have. Quite a few years ago I wasn't in charge. ^{There} ~~And it~~ was reported, grounding in that area. And we checked it out and found nothing.

Now, I believe, I am not positive, that was before the 32 foot project.

Then one other time, on the map it shows that the channel south of where this grounding was, the channel is over 600 foot wide. I had an 80 foot float and I was at the east end of the float and a Texaco Company barge come up -- a ship. I thought he was going to run us over. He hollered and said you are crowding us. I said what are you talking about. I am only using 80 foot of a 600 foot channel. It was a Texaco boat and they have their own pilots.

That night, I went up and I stopped, because it was near my house where the tank is. What happened --

Q Mr. Weidman, I don't mean to cut you off. We are concerned now not with a 600 foot channel but

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A I don't know.

Q Will you make a search of your file?

A Yes.

Q If there are more than two I would like to know whatever you can find.

A Right. I will go through the records we have.

Q And you will provide the information to Mr. Schulmeisters and Mr. Schulmeisters will pass it on to me.

MR. SCHULMEISTERS: Certainly.

A I don't know if I can give you a report. A request for the survey -- like that. But just the showing that we swept it clear.

Q In making these surveys in response to the reports of a grounding, did you become aware of the existence of a pinnacle of rock along the easterly edge of the channel?

A No.

Q Do you have Moran Exhibit 17, please.

You did not know there was such a pinnacle of rock there?

A I didn't know there was a pinnacle of rock. It slipped my mind. I had to make sure that there was any rock in the area. A man who is dead now, my old

1
2 boss, he said, Oh, they are getting out of the channel
3 and hitting old Bug Island Light. That meant nothing
4 to me. That is my only knowledge of anything being
5 close to the channel, was old Bug Island Light.

6 Q Have you ever seen this chart before? This
7 survey report or chart which is marked as Exhibit 17?

8 A This I imagine was right after the dredging.

9 Q Have you ever seen it before?

10 A I would believe so. I am not positive because
11 we have hundreds of these. But I believe so, yes.

12 Q Do you recognize this area which has been
13 marked with an A as the pinnacle which you found when
14 you made your survey on November 2nd?

15 MR. SCHULMEISTERS: I will object to the
16 use of the word pinnacle.

17 Q Would you describe that as a pinnacle?
18 The configuration there?

19 A No. It is clear it is a high spot.

20 Q I am talking about the point A here?

21 A It is a high spot. It is a hundred feet according
22 to contour. Its roughly a hundred feet long in there.

23 Q Were you aware of the existence of this
24 high spot as you call it?

25 A No. I was not aware of it myself.

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Q Do you know what the nature of the bottom is
3 at that point?

3

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A I do now.

5

Q What is it?

6

A Its rock. And I did know it was rock in there
7 after grounding because we went and looked it up and this
8 was a rock area where they had removed rock which I had
9 completely forgotten about. If I was on that rock, I
10 don't know.

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Then on the survey for the rock part of it --
that, I am not positive of, I do know it is a rock
area and it was dredged. In all probabilities you have
all deep water if you notice all through here except
right there on the channel line. These were probably
taken before the rock was removed. I don't know when
the rock was removed but I believe according to these
soundings 237 and 233 which show on the channel line
that that rock was taken out after this date.

20

21

MR. SCHULMEISTERS: You are pointing to
July 1963?

22

THE WITNESS: Yes.

23

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Q But in fact a high point like that rock was
found by you when you made a survey on November 2, '63?
Outside of the channel.

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2 Q Can you describe for us what you did on
3 November 2, 1973 in conjunction with the sweep that
4 was conducted in this area?

5 A We swept that area --

6 MR. SCHULMEISTERS: He is talking about
7 November '73.

8 A After the hitting. After the reported grounding
9 or hit or whatever, we went down and made our survey
10 in the channel and found nothing. Now, generally,
11 that is all we do. When the channel is clear it was
12 my suggestion we take a run out and see if there wasn't
13 a high spot outside of the channel that he might have
14 gone aground on. We did find such a high spot.

15 Q Who was with you when this survey was
16 undertaken?

17 A The pilot of the tug.

18 Q Do you remember his name?

19 A No, I don't. And some other person from Moran.

20 Q Do you remember his name?

21 A I don't remember his name.

22 Q Was it Captain Allan?

23 A Names and me -- I forgot. I can't remember.

24 Q Anybody else that wasn't with the Engineers?

25 A Nobody else that wasn't with the Engineers.

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Q Then there was yourself?

A And the boat.

Q Who was in the boat?

A Two men that I just explained to you. Herbie Wright and myself.

Q Was anybody else involved in making this survey?

A Yes. There was a couple of others. At least two other men. Probably three.

Q Where were they located?

A ^{was on the base line} John Gehres and Silas Warriner was on Bronx Triangulation Station called Dyke A.

Q Can you show me where that is? I will show you this chart which is Exhibit 12 and ask you if you can draw a circle.

MR. SCHULMEISTERS: Mr. Volk. Before you answer this question, let's make it a little easier --

Off the record.

(Discussion off the record.)

MR. SCHULMEISTERS: Before you ask that question, let me show the witness a document here and I ask him if he recognizes that?

Q What is this document, Mr. Weidman?

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2 A This is a layout sheet. These are the layouts
3 for the channel lines and cross ranges.

4 Q Where is that prepared? Where was it
5 prepared?

6 A In Albany.

7 Q Was it prepared before November 2, 1973?

8 A Yes. It was. It was prepared -- this particu-
9 lar one now, there is a cross on that, might have been
10 drawn up later, but the channel and everything was the
11 same. The layouts were the same. We used to have a
12 little different sketch up in here and the fellow
13 decided that he wasn't going to bother with the sketch.

14 Q What is the purpose of this particular
15 document?

16 A For instance, you report a hitting, you want to
17 check to see if the channel is clear, so we have
18 layouts for the channel lines.

19 For instance, there is a station here called
20 Stuyvesant Light. The east channel line is a given
21 distance on a given azimuth of this triangulation
22 station.

23 Q The Stuyvesant Light shown on the naviga-
24 tion chart which I have here.

25 A Well --

Q Would that be this Beacon 32 here? Do
you see where it says 32 at that point?

A That is a buoy.

MR. SCHULMEISTERS: That is a Beacon.

THE WITNESS: Is that a beacon or buoy?

MR. SCHULMEISTERS: Light 32 is the
Stuyvesant Light.

MR. VOLK: As shown on this Exhibit,
Moran Exhibit 12.

We would like to have this marked.

(Layout sheet for the channel lines and
cross ranges marked as Exhibit No. 25 for
identification as of this date.)

Q What is the purpose of this layout sheet?

A We want to establish this channel line for
dredging purposes. I don't know how to explain it
to you, but if we want to dredge this area we would
lay out the east channel line and set a range for the
dredging. They would set their own. We give them a
hand. We always do. Make sure we check their work.

The layout for the east channel line off of
this triangulation station is shown as Stuyvesant Light
Station 23, that is the date it was established. The
east channel line is 7.35 feet on ^{265° 39' 13"}~~2653913~~ azimuth.

xxxxx

Q What is that azimuth related to? Is it related to this navigation chart?

A No. It is a different grid coordinates.

Q Than shown on the navigation chart?

A Yes.

Q Do you ^{have} ~~know~~ a master chart that has all these grid coordinates?

A We have what we call a general survey sheet which would take in that area.

Q Do you have that up in your Albany office?

A Yes.

Q Are these grid coordinates shown on this survey which is Exhibit 13?

A It would be the same.

Q As shown on this survey?

A Yes, the same coordinates.

Q I am referring now to Moran Exhibit 13. Who was station 3 at the Stuyvesant Light on November 2, '73?

A Nobody.

Q Tell me where the two men were placed. That is, Silas Warriner and John Gehres when you made your survey?

A Silas Warriner was set up on Bronx Island Dyke A.

1
2 Q Can we draw a circle around it?

3 A Yes.

4 Q Draw an arrow with a letter A on this chart,
5 please.

6 A (Witness complies.)

7 Q That is where John Gehres was located?

8 A No. Silas Warriner.

9 Q Where was Gehres located?

10 A We put in, going from this description of layout
11 like I explained to you before, we laid out these various
12 points, down along the beach to get out into the
13 channel right on down the beach. John Gehres set up
14 on each one of these points and kept the boat on line
15 as we were operating the boat back and forth. He had
16 set up on the point and kept us on line.

17 Q In other words, the boat was moving up and
18 down the river?

19 A North and south, yes.

20 Q It was his function to keep you on a line
21 going up and down the river?

22 A Right.

23 Q So that he was stationed at a position
24 along the shore south of Stuyvesant Light?

25 A Every twenty-five feet this way. But now he

1
2 can't get out here because this is all water so we had
3 to compute the distance to ~~go~~ down along the beach.

4 Q What was the monument that the distance
5 was computed from?

6 A Stuyvesant Light 23.

7 Q That was the basic station used by Gehres
8 for keeping you on line?

9 A That was the station where the ranges were laid
10 out from.

11 MR. SCHULMEISTERS: So we don't confuse
12 the record. Stuyvesant Light station is that
13 triangle here, that is not the light itself.

14 THE WITNESS: Right. It is an old
15 lighthouse foundation and this station is on the
16 foundation.

17 MR. VOLK: It is labeled on the chart.

18 MR. SCHULMEISTERS: He is taking it from
19 the triangle.

20 THE WITNESS: The light is north from the
21 triangle.

22 There is a big ^{flat} ~~fat~~ round base, about forty
23 foot in diameter.

24 Q Was Gehres at this station or the stations
25 south of that station? Was he there by himself or

1
2 did he have a helper with him?

3 A He had a helper, yes.

4 Q How about Warriner, was he by himself?

5 A He was by himself.

6 Q What was the name of the helper that was
7 with Gehres?

8 A Eugene Maruszczac.

9 Q Now, there are some notations made on this
10 layout sheet which I would like to have you explain.

11 For example, what is McCabes South -
12 McCabes So. 23. What does that mean?

13 A That is this station right here. This
14 triangle represents stations. Triangle, triangle and
15 triangle. That is all that is on this sheet.

16 Q Are those triangles marked in some way?

17 A This one here is a concrete monument about four
18 foot long and so wide on the top and about ten inches
19 wide on the bottom.

20 Q How high is it?

21 A Out of the ground?

22 Q Yes.

23 A Sometimes that one might be buried. I haven't
24 seen it in years because there was not much use ^{for} ~~to~~ it.

25 I think the last time we used it was for some

1
2 Q And then after you found nothing in the
3 channel, what did you do?

4 A Well, I thought it would be a good idea to
5 take some runs outside the channel which is not what
6 we general do.

7 Q Is that run eight?

8 A It sounds familiar.

9 Q That was from the east channel line to
10 twenty-five feet to the west of the channel, is that
11 correct?

12 A No.

13 Q To the east of the channel?

14 A Yes. To the east.

15 Q From the east channel line to twenty-five
16 feet east of the channel?

17 A Yes.

18 Q I show you a document previously marked
19 Government's Exhibit K. Do you recognize that?

20 A Well, I recognize it as a fathometer chart,
21 but I couldn't tell you exactly where it is.

22 Q Do you know what sweep it was?

23 A No, I don't.

24 MR. VOLK: Do you have the full roll,
25 Mr. Schulmeisters?

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A From this? Yes. theoretically it could be, yes. Theoretically it could be just inside the channel because the channel I did and swept clear so it could be theoretically, but I know it isn't.

Q But according to that tape it could be?

A According to that tape, yes. Because you don't know where it is in that twenty-five feet. I have no way of knowing because we were covering twenty-five feet. I have no way of knowing, no.

Q So so far as that tape is concerned that high spot could be right at the channel edge or twenty-five feet inside the channel edge or outside the channel edge?

A According to the chart it could be. You wouldn't know if nobody knew what was there. They would not know. They would just know that some place in that twenty-five feet --

Q The accuracy of this position, of course, depends on how accurate Mr. Gehres was in setting up his transit?

A Well --

Q Is that right?

A If he is off of the point a little bit it isn't going to make any appreciable difference.

1
2 A Is basically the same.

3 MR. VOLK: I have no further questions.

4 EXAMINATION BY MR. SCHULMEISTERS:

5 Q You mentioned earlier that the pilot of the
6 tugboat when he was in the boat with you and he showed
7 you the spot in a channel where he said he hit; did
8 you find anything there?

9 A No.

10 Q This light 36, it is marked on Exhibit 12
11 and Exhibit 25, you mentioned that that has been hit?

12 A Yes.

13 Q How do you know that?

14 A Shortly, not too long after we made the survey.

15 MR. VOLK: After November, 1973?

16 THE WITNESS: Yes. Because when we made
17 the survey, the light was fine. Now it was at
18 an angle and knocked 90 degrees from where it
19 should be.

20 Q You mentioned the taking of azimuth,
21 McCabes Station Number 23 on Exhibit 25 was not much
22 use for taking bearings. Why did you say that?

23 A Its back in the woods. And we would have to
24 trim it out which would involve work, time and, of
25 course, money.

1
2 It makes it easier for us. Generally the pipe is
3 in back. Sometimes its in front.

4 Q Trimming would be necessary to get to it?

5 A A little. Not much. Not too much there, but
6 this would be quite a bit. That is, McCabes. Now,
7 if we had to set ranges then we would use it regardless
8 of the trimming.

9 Q The Bronx Station and the painting of it.
10 Was it painted at that time?

11 A No, it would do no good to paint it.

12 Q Or some tree?

13 A There is a tree in back of it. We had cloth
14 tied on and I didn't see any paint, no. But we did
15 have a cloth tied so we could come back to it real
16 quick and use it.

17 Q Mr. Volk asked you about Mr. Gehres
18 being there on the Stuyvesant Light Station or one
19 of the other stations and you mentioned there wouldn't
20 be much difference if he was off a little bit?

21 A No.

22 Q There wouldn't be?

23 A No.

24 Q Why not? Explain that to us, please.

25 A It wouldn't be noticable in a run. If he was off

1
2 like I said, the edge of the tack for instance, setting
3 up on Stuyvesant Light Station, we will say, taking
4 a shot on Bronx, and if he was a foot off of the
5 station, but on line with it and a foot that way,
6 when he turned an angle up the river he would not be a
7 foot off a line because he would be parallel though
8 he would be off a little bit. Now, a foot, in no
9 way are you going to set it a foot off.

10 Q He would be less than a foot off?

11 A He couldn't possibly be a foot off. Sometimes
12 you have wind blowing and with a wind blowing it is
13 hard to set a transit up. When we do triangulation
14 or when we want to set that channel range for dredging
15 even then they would over dig. But we do have transits
16 that we can use in the wind. They are ^{Ganley} ~~fairly~~ optical
17 plummet transit which we can use in the wind but with
18 a plumb bob you have to get your leg down there and
19 cross your legs and try to hold it and keep the wind
20 from blowing it.

21 Q But the accuracy --

22 A This is not a first ordered survey.

23 Q The accuracy would be within a foot?

24 A Yes.

25 MR. VOLK: If it was displaced by one

1
2 foot?

3 THE WITNESS: Yes. It would be less than
4 that.

5 Q Do you have any doubt in your mind that the
6 channel was clear?

7 MR. VOLK: Objection.

8 MR. SCHULMEISTERS: On what ground?

9 MR. VOLK: It calls for a conclusion.
10 Ask him the facts.

11 MR. SCHULMEISTERS: I will note your
12 objection.

13 Answer the question.

14 Q Do you have any doubt in your mind that
15 the channel is clear?

16 MR. VOLK: Objection. We are not
17 interested in the workings of this witness' mind.
18 We are interested in the facts.

19 MR. SCHULMEISTERS: Your objection is noted.
20 Answer the question.

21 A I have no doubt but that the channel is clear.
22 I have been over it twice and found it to be clear.
23 With the exception of the west side we found a little
24 shore.

25 Q I am talking about the east side.

1

2

A We found nothing. We went over it twice.

3

4

Q Have you made a subsequent survey of the area on the channel line and have you made subsequent survey of the area?

5

6

A Yes.

7

Q I want to show you something --

8

9

10

MR. SCHULMEISTERS: I would like to have this marked as Government's Exhibit A for identification.

11

12

(Survey of the area in question marked Government's (Weidman) Exhibit A for identification as of this date.)

13

14

Q I show you Weidman's Exhibit A for identification. What is it?

15

16

A It is a survey of the area in question.

17

Q Did you make that survey?

18

A Yes.

19

Q When was it made?

20

A The 28th of April, 1975.

21

Q Does that show the channel being clear?

22

A Yes, sir, it does.

23

24

Q During the survey, how many transits were used?

25

A Three. Two cutting in and one leaving the boat.

A

1
2 on line.

3 Q And the projected depth of the channel is
4 what?

5 A Thirty-two feet.

6 Q Is the east channel line marked here?

7 A Yes, it is.

8 Q On Exhibit A?

9 A Yes.

10 Q During this survey did you find anything in
11 the channel?

12 A No, nothing.

13 MR. SCHULMEISTERS: No further examination.

14 xxxxx FURTHER EXAMINATION BY MR. VOLK:

15 Q What was the reason for making the survey
16 of the 28th of April?

17 A I was requested.

18 Q Who requested you?

19 A (No response.)

20 Q Mr. Schulmeisters?

21 A Mr. Schulmeisters.

22 MR. SCHULMEISTERS: It was made pursuant
23 to my request.

24 Q In conjunction with this litigation?

25 A I guess so.

**Excerpts From Deposition of Heheadon Radden
(Moran Exhibit 29)**

S T I P U L A T I O N S

It is stipulated and agreed by and between counsel for the respective parties that the reading and signing of this deposition by the witness be, and the same are, hereby waived.

It is further stipulated and sgreed that the filing of this deposition with the Clerk of Court is hereby waived.

It is further stipulated and agreed that all objections, except as to form, are reserved until trial.

* * * * *

HEHEADON RADDEN

called for examination by Defendant and Third-Party Plaintiffs, being first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION BY MR. VOLK:

Q Mr. Radden, by whom are you employed?

A I'm employed by NOA, the National Ocean Survey, in the Marine Chart Division.

Q And what is your job with them?

A My job is supervisory cartography.

Q Are you supervisor of any particular area of cartography? Particular geographical area, that is.

1 A Yes.

2 Q What geographical area are you responsible for?

3 A For charts from Miane to Long Island Sound, the charts
4 covering that area.

5 Q How many supervisor chartographers are there in the
6 National Oceanic and Atsmosphere Administration?

7 A I don't know in NOA, but in the Marine Chart Division,
8 in the Nautical Chart Branch, we have eight areas. Seven of
9 those areas maintain charts, and eight is more a utility area,
10 but still the personnel would be considered supervisors.

11 Q And you are head of one of those areas, is that right?

12 A Right.

13 Q Who is your superior?

14 A My superior would be Mr. Max Rogers. He's Chief of
15 the Nautical Charts Branch.

16 Q And he is in overall charge of all these eight super-
17 visors?

18 A Sections.

19 Q Eight sections?

20 A Right.

21 Q How long have you been supervisor of chartography?

1 Q Have you taken any courses outside?

2 A No. That would be a direct cartography course?

3 Q Yes.

4 A No.

5 Q Now, as supervisor of cartography, what are your
6 duties?

7 A Well, the duties are to assign charts to the other
8 employees, and also, after they've been assigned, for compila-
9 tion or have someone review it, or review that particular job
10 yourself.

11 Q When you say charts, do you mean nautical charts?

12 A Right.

13 Q What is the purpose of these nautical charts?

14 A These charts are aids for the mariner.

15 Q They are published to enable the mariner to locate
16 his position, are they published to enable -- is one of the
17 purposes of the charts to enable the mariner to locate his posi-
18 tion in a river?

19 A Ask that again. Repeat that, will you?

20 (Whereupon, the question referred to was read back

21 by the Reporter.)

1 THE WITNESS: It should be an aid for a mariner in
2 determining his position.

3 Q (By Mr. Volk) Is one of the purposes to warn the
4 mariner of dangers in the river?

5 A Yes, to aid a mariner for dangers in the water.

6 Q Where do you get the information from that you put on
7 these navigation charts?

8 A The information is received in the Chart Information
9 Branch, and those documents would be recorded on a standard,
10 which is a black and white copy of that particular drawing.
11 This is where we would go, to the standard, and get these source
12 documents that's been recorded there, and apply them to the
13 black and white drawing.

14 MR. VOLK: Can you read that back to me, please?

15 (Whereupon, the answer referred to was read back by
16 the Reporter.)

17 Q (By Mr. Volk) Where is the Chart Information Branch,
18 where do they get the information?

19 A They receive documents from the Coast Guard, the Geo-
20 logical Survey, the Corps of Engineers, private citizens.

21 Q Any other sources?

1 A Yes. The United States Power Squadron. Off hand I
2 can't think of any others.

3 Q Do you get any information from aerial photos?

4 A Right. Aerial photographs, right.

5 Q Who makes the aerial photographs available to you?

6 A MR. SCHULMEISTERS: Why don't you pin that down with
7 respect to times when they have been using aerial photographs?

8 MR. VOLK: Well, I'm talking about as of 1973.

9 Q (By Mr. Volk) Were you using aerial photographs in
10 1973?

11 A Yes.

12 Q Does the Chart Information Branch -- well, go ahead.

13 A A When you speak of aerial photographs now, you are
14 speaking about just the photographs.

15 Q Yes.

16 A If we're talking about topographic, we get 'T' sheets
17 in with the topo. But we would not handle a photograph, a direct
18 photograph of something, that's processed through the Coastal
19 Mapping Division, and it's processed in the form of a 'T' sheet.
20 Then we would handle 'T' sheets, not the photograph.

21 Q Is the 'T' sheet something to do with topographic

1 information?

2 A Yes.

3 Q 'T' standing for topographical?

4 A Right.

5 Q Now, does the Chart Information Branch develop its
6 own information?

7 A No.

8 Q It's just a receiver of information.

9 A Right, it's a receiver from different outfits.

10 Q It won't go out and make a survey on its own, will it?

11 A No. The Chart Information Branch? No.

12 Q Will the National Oceanographic and Atmospheric Ad-
13 ministration make a survey on its own, to develop information?

14 A Yes, the Corps, they have a Corps Branch that runs
15 surveys, right.

16 Q Now, the Corps of Engineers?

17 A No, no.

18 Q Oh, they have a separate Branch?

19 A Right, right.

20 Q What's their name?

21 A All I know is it's the Corps, it still comes under

1 NOA.

2 MR. SCHULMEISTERS: Before it becomes confusing, I
3 think you should ask him if the NOA surveyors survey project
4 channels.

5 MR. VOLK: No. I'll develop it.

6 MR. SCHULMEISTERS: I don't mind but, you know, other-
7 wise it --

8 MR. VOLK: You don't have to tell me how to develop
9 information. I've been at this for many years.

10 MR. SCHULMEISTERS: I'm just trying to make it easy
11 so we don't go off on a tangent there.

12 Q (By Mr. Volk) Will you explain what the Corps is?

13 A The NOA Corps?

14 Q Yes, the NOA Corps. That's NOA, as an abbreviation
15 for the National Oceanographic and Atmospheric Administration,
16 is that correct?

17 A National Ocean Survey.

18 Q All right, what does the NOA Corps do?

19 A They have ships and they may run surveys. That would
20 be all I know, in a sense. We receive surveys from the Corps.

21 Q Do these ships conduct surveys in the waters such as

1 Upper Hudson River? Do you receive information from them con-
2 cerning the Upper Hudson River?

3 A Not if it's a federal channel, no.

4 Q If it's a federal channel, who conducts the survey?

5 A The Corps of Engineers, they are responsible for your
6 federal dredged channels.

7 Q And the NOA Corps would not do any work in those
8 federally dredged channels?

9 A No.

10 Q Well, then will you describe where the NOA Corps would
11 conduct surveys, what bodies of water, for example?

12 A I think they would be able to run surveys anywhere
13 that's not maintained by the Corps.

14 Q Do you mean the Corps of Engineers?

15 A Right.

16 Q You're speaking of two Corps now, and I --

17 A Right, the Corps of Engineers. The Corps of Engineers
18 would be responsible for federal channels. Any waters outside
19 of that, I would think that NOA Corps could do a survey in that
20 area.

21 Q Now, how often are changes or modifications made on

1 navigational charts? And now I'm specifically questioning you
2 about Charts C&GS 284.

3 A And what are you asking?

4 Q How often are changes or modifications made on that
5 chart, by your office?

6 A Well, the charts have regular printing cycles, and
7 possibly it could be a yearly printing, each year, or it may be
8 a two year printing. Or some modifications to that is, if
9 enough change has taken place, from sources received, then poss-
10 ibly a chart would be printed ahead of schedule, or a chartlet
11 may be put out in that particular area.

12 Q What's the printing cycle for Chart 284?

13 A This is a two year printing.

14 Q So, every two years you print out a new chart?

15 A Yes.

16 Q What's the date of the latest printing of Chart 284?

17 A 24th Edition, August 11, 1973.

18 Q Well, we've gone two ~~years~~ ^{months} ^{61st} past August 11, 1973.

19 A 284 is in reproduction, and it may be slightly behind
20 schedule, but it's in reproduction to be engraved and printed.
21 How soon, I don't know. But it's in reproduction, being engraved

1 right now.

2 Q But theoretically, it should have come out August 11,
3 1975?

4 A No. When we say two years, it may or may not be that
5 exact month. You would have to check with the Chief of the
6 Nautical Chart Branch. I do not make up the schedule for the
7 printing cycle of these.

8 Q But the last chart that was printed was August 11,
9 1973?

10 A Right, 1973.

11 Q Suppose in between printings there are important
12 changes or modifications that should be called to the attention
13 of mariners? How does your office go about disseminating that
14 information?

15 A By a local Notice to Mariners. A local Notice to
16 Mariners should be written on any critical condition that would
17 take place.

18 Q And is your office responsible for preparing local
19 Notice to Mariners?

20 A Yes.

21 Q Does that come under your section?

1 A No.

2 Q What section is responsible for that?

3 A That comes under the Chart Information Branch, and
4 the Chart Information Branch consists of two sections, the
5 Standards Section and the Aids to Navigation Section. And when
6 a condition like that arises, then the Aids Section would write
7 the Notice to Mariners.

8 Q Does your section embody the Notice to Mariners on
9 your master chart, so that you will have the information avail-
10 able for the next printing?

11 A Yes. It's recorded on the Aid Proof, if a Notice is
12 written on a particular object. It's recorded on the Aid Proof.

13 Q Aid Proof? Do you have the Aid Proof for 284 here
14 with you today?

15 A Yes.

16 Q Is this it right in front of us?

7 MR. SCHULMEISTERS: We have a number of them here.

8 THE WITNESS: This would be it, the 24th Edition,
9 August 11, 1973.

0 MR. VOLK: May we please have this marked for ident-
1 ification?

1 MR. SCHULMEISTERS: I would rather not.

2 MR. VOLK: I can have it marked though, can't I?

3 MR. SCHULMEISTERS: I would rather -- let us stipulate
4 that we will give you a copy of that.

5 MR. VOLK: Well, it's deemed marked.

6 MR. SCHULMEISTERS: Yes, it's deemed marked, and we
7 will supply a copy of it to you.

8 MR. VOLK: All right, it's deemed marked as Plaintiff's
9 Exhibit 1.

10 MR. SCHULMEISTERS: And that's the 24th Edition,
11 August 11, 1973.

12 MR. VOLK: And it has some numbers down here in the
13 left hand corner, and I'll read them off. The first is a number
14 28 in a circle, in red. Underneath that in red is a number,
15 12348. Underneath that in blue is a number, 284. And then in
16 the center, on the Westery side in the border is written in red,
17 No. 31. I think that's enough to identify it.

18 (Whereupon, the Aid Proof referred to was marked, i.e.
19 deemed marked, for identification as Plaintiff's
20 Exhibit No. 1)

21 Q (By Mr. Volk) Now, am I correct that this then, this

1 Aid Proof that we've just identified, incorporates all informa-
2 tion put out by Notice to Mariners for this area?

3 A Right.

4 Q From August 11, '73 to date?

5 A What?

6 MR. VOLK: Read it over.

7 (Whereupon, the question referred to was read back
8 by the Reporter.)

9 THE WITNESS: Yes.

10 Q (By Mr. Volk) Is your office in any way responsible
11 for establishing bench marks?

12 A No. When you speak of my office now, you are referr-
13 ing to the Marine Chart, the Nautical Chart Branch, right?

14 Q Well, I was thinking of NOA I guess.

15 A Well, under NOA they would go to the Corps.

16 Q Which Corps are we talking about now?

17 A The Corps that would be under NOA.

18 Q NOA Corps, not the Corps of Engineers.

19 A Right.

20 Q Does the NOA Corps establish bench marks?

21 A Yes.

1 Q Now, this Chart 284 is at a scale of 1 to 40,000.

2 A Right.

3 Q Who is responsible for determining that scale?

4 A The Planning Committee of the Nautical Charts Branch.

5 Q Does your section have anything to do with determin-
6 ing the scale?

7 A No.

8 Q Do you have any input to the Planning Committee? In
9 other words, do you recommend to them an alteration of scale?

10 A Yes, you may.

11 Q Now, how long has this scale been in use now, to
12 your knowledge, for this area, and on chart 284?

13 A I believe that the scale has been the same since
14 it was originally reconstructed in 1909.

15 Q Do you know if at ^{any} ~~that~~ time the Planning Committee
16 or your section ~~had~~ made any recommendations to change that
17 scale?

18 A Yes, in 1942, Chart 284 was reconstructed.

19 Q At a different scale?

20 A At the same scale. If we may, we can check the
21 history to make sure that the scales did not change.

1 A In 1942.

2 Q All right, what was the scale of the chart prior to
3 the reconstruction, if you know?

4 A Let me check. I have some of the old standards, so
5 the scale should be on them for before 1942.

6 Q All right.

7 A Okay, this is a copy after the first printing, Stan-
8 dard No. 1, and the scale was 1 to 40,000.

9 Q And that is the date of what, 1909?

10 A Published at Washington, D. C. December 1909.

11 Q And the scale as of 1975 is still 1 to 40,000?

12 A Yes.

13 Q So, am I correct in understanding that the scale has
14 remained the same over a period of about 65 years?

15 A Yes.

16 Q Now, going back to my earlier question, do you know
17 of any recommendations made to the Planning Committee or to
18 your section, or higher sections, pertaining to changing the
19 scale?

20 A No.

21 Q Do you know of any discussion, or study which had

1 channel, or a channel line there, is that correct?

2 A Right.

3 Q Now, looking at that chart and comparing it with the
4 present 284, would you agree that there has been a substantial
5 increase in the depth of the channel?

6 A Yes.

7 Q MR. SCHULMEISTER: And Mr. Volk, for the record, the
8 1909 chart does not show a channel, it shows the river.

9 MR. VOLK: Okay, the river then.

10 Q (By Mr. Volk) Looking at -- I'll withdraw that.

11 Does your office or your section have anything to do
12 with establishment of buoys?

13 A No.

14 Q Does it have anything to do with the placement of
15 the buoys? Positioning of buoys?

16 MR. SCHULMEISTER: I object to the form. Placement
17 in the water or on a chart?

18 MR. VOLK: Placement in the water.

19 THE WITNESS: No.

20 Q (By Mr. Volk) From what source do you get informa-
21 tion concerning the positioning of buoys, in the water?

- 1 A No.
- 2 Q What is the little irregular circle around that?
- 3 A That's the ^{riprap}~~riffraff~~, which could possibly be concrete
4 or something protecting the structure of the light.
- 5 Q What does that mean to a mariner?
- 6 A It means danger, stay away from it.
- 7 Q What is ^{riprap?}~~riffraff?~~
- 8 A ^{Riprap}~~Riffraff~~ would be a protective, and when I say pro-
9 tective I'm not talking from the mariner's standpoint, but the
10 foundation possibly for the light structure.
- 11 Q Could it be rocks?
- 12 A Yes.
- 13 Q I notice at the bottom of this chart there's a little
14 notation that says, "Caution".
- 15 A Yes.
- 16 Q "Mariners are warned to stay clear of the protective
17 ^{riprap}~~riffraff~~ surrounding navigational light structures shown thus",
18 and then it gives the same kind of mark as you have at beacon 29.
- 19 A Light 29.
- 20 Q Light 29. That ^{riprap}~~riffraff~~ is shown to be outside the
21 channel, is it not? To the West, or right on the channel line.

1 A Well, right ^{outside} ~~on~~ the channel.

2 Q Is it important to warn mariners of dangers right
3 outside the channel?

4 MR. SCHULMEISTERS: I --

5 MR. VOLK: Now, don't --

6 MR. SCHULMEISTERS: I object to the form of the
7 question.

8 MR. VOLK: And I object to your interrupting.

9 Would you read back the question?

10 Whereupon, the question referred to was read back
11 by the Reporter.)

12 THE WITNESS: Yes.

13 Q (By Mr. Volk) What is the meaning of the star shown
14 just above light 23 on chart 284?

15 A That's the same as the rocks, an awash symbol.

16 Q A what?

17 A A rock awash symbol.

18 Q That means it's a rock.

19 A It's a rock, right.

20 Q And is that outside the channel also?

21 A It's on the channel edge.

1 Q It's just outside, isn't it?

2 A It seems to me tough to tell the limit line.

3 Q Well, the rock itself, the center of the star is
4 outside, isn't it?

5 A Right, the center of the star. So the rock would be
6 outside, right.

7 Q Again, what's the purpose of showing that on the
8 chart at all?

9 A Because it's a danger to navigation.

10 Q Did your section have any information concerning the
11 nature of the bottom along the Easterly edge of the channel in
12 Reach 23? When I say Reach 23, do you know what I mean?

13 A Reach 23? Yes, I have an idea.

14 MR. SCHULMEISTERS: You have an idea, or do you know?

15 THE WITNESS: No, I do not know.

16 MR. VOLK: All right, strike the question, withdraw
17 the question.

18 Q (By Mr. Volk) Now, did your office have any infor-
19 mation concerning the nature of the bottom to the East of the
20 channel and between Lights 34 and 36 on Chart 284? Prior to
21 October 18, 1973.

1 Do you want to read that back?

2 (Whereupon, the question referred to was read back
3 by the Reporter.)

4 THE WITNESS: No.

5 Q (By Mr. Volk) If such information is available to
6 you, do you put it in the chart?

7 A Yes, it would be put on the chart.

8 Q So if it was a mud bottom, you would indicate it?
9 Or if it was -- well, you have a lot of symbols here, don't you,
10 on the right of the chart? It shows Bottom Characteristics.
11 Do you try to use those things when you have that information
12 available to you?

13 A Yes.

14 Q For example, if it's rocky, you put RKY, wouldn't you?

15 A Right, that may be used.

16 Q Now, there's no such symbol between Lights 34 and 36
17 East of that channel on Chart 284, is there?

18 A No.

19 Q So, is it your testimony then that your section
20 never received from any source information concerning the nature
21 of the bottom in that area, that is, between Lights 36 and 34

1 on the Easterly side of the channel?

2 MR. SCHULMEISTERS: You may refer to any record you
3 have.

4 MR. VOLK: You may refer to anything you want to.

5 THE WITNESS: I will answer it this way. When I took
6 over this section, as I said sometime in 1971, we have not re-
7 ceived any source documents that stated the condition of the
8 bottom between Lights 36 and 32.

9 Q (By Mr. Volk) I was talking about Light 34 actually.

10 A No, it's Light 32.

11 Q All right, buoy 34.

12 A There is general information dealing with the condi-
13 tion of the Hudson River that you could get from the Coast Pilot.

14 Q Now, getting back to this little star just above
15 Light 23, did you say that indicates a rock awash?

16 A Yes.

17 Q Does that mean that it's visible?

18 A Sometimes, it's awash at certain times.

19 Q Do you have a symbol for marking a rock which is
20 always submerged?

21 A Yes.

1 Q And you have also a symbol for marking a rock that's
2 submerged and indicating the depth above that rock too, don't
3 you?

4 A The elevation. This particular rock that you see
5 here --

6 MR. SCHULMEISTERS: You're referring to that star-
7 like thing?

8 THE WITNESS: Yes, it's a rock awash. That would be
9 awash at some elevation. The elevation is not shown here, so
10 I would not know the elevation of that rock.

11 Q (By Mr. Volk) But you do have a way of designating
12 a submerged rock with the depth of water above it, don't you?

13 A We have a symbol.

14 Q You have a symbol, right?

15 A Right. That would be a sunken rock at all times.

16 Q Yes. I show you a document marked "Moran Exhibit
17 17", which is a survey made by the Corps of Engineers in June
18 and July of 1963, and it shows what they call Reach 23, and
19 which I tell you is the area South of Light 36, South of Hotal-
20 ing Island, in the Upper Hudson River.

21 Now, I'm asking you, did you section ever receive a

1 A Let me look.

2 Q What was the date of that control chart prior to '67?

3 MR. SCHULMEISTERS: By the way, we'll supply a copy
4 which can be deemed, the control chart, as Exhibit 6, if you
5 wish.

6 MR. VOLK: All right, if you supply me a copy.

7 MR. SCHULMEISTERS: Oh, certainly.

8 MR. VOLK: All right, that's 284 dated June 26, 1967,
9 and that will be six.

10 (Whereupon, the 1967 Chart 284 referred to was marked
11 Plaintiff's Exhibit No. 6 for identification.)

12 THE WITNESS: The tabulation that was on this stand-
13 ard reads "Hudson River channel depths was tabulated from surveys
14 by the Corps of Engineers, from reports of January, 1964 and
15 surveys to November, 1963, would be less than 32 feet."

16 Q (By Mr. Volk) So, we can assume then that between
17 the dates of November, '64 and June, '67 the depth was increased
18 to 32 feet, is that correct?

19 A Somewhere in that period, yes.

20 Q Does the increase in depth mean that larger ships
21 can use the river?

1 A Yes, sir. Increase in depth, yes.

2 Q And knowing that, in your opinion, wouldn't the chart
3 of greater scale, say 1 to 10,000, be more helpful to a mariner
4 than this chart with a scale of 1 to 40,000?

5 A Not if you're showing dredged limit lines for that
6 particular channel.

7 Q You're saying that a chart of 1 to 10,000 would be
8 of no more help to a mariner than a chart of 1 to 40,000, for
9 a large ship?

10 A Yes. The channel would be shown by dredged limit
11 lines, and by Aids to Navigation, lights, buoys, et cetera, no.

12 Q And what is the basis of your answer?

13 A Why do I say that?

14 Q Yes.

15 A Because when we are showing the dredge limit lines,
16 these are the dashed lines, those would be imaginary lines, you
17 would not see them anyway. You would only see the Aids in your
18 boat out there. This is what will govern, you're staying in
19 between these.

20 So, in reality, when you are out there, in a boat,
21 the Aids would be, if it's a channel 400 feet wide, there would

1 actually be 400 feet between them. So at 1 to 40,000 we have
2 shown the Aids, no depths between them, and we have shown the
3 dredge limit lines. So it's a matter of your eye seeing this
4 wide or seeing it this wide, which would be on a 10,000 scale
5 chart.

6 Q So, what you're saying is the same information is
7 contained on the 1 to 40,000 chart as would be on the 1 to
8 10,000 chart.

9 A Dealing with the dredge limit lines and the Aids.

10 Q You have never sailed on board a ship, have you?

11 A You mean worked on a ship?

12 Q Worked on a ship.

13 A No.

14 Q You didn't have any training in navigation on board
15 a ship, have you?

16 A Navigating, no.

17 Q So, you're speaking as a chartographer, dealing with
18 information available to a mariner, rather than as a mariner
19 who is an expert in navigation?

20 A Read that back.

21 (Whereupon, the question referred to was read back

1 by the Reporter.)

2 Q (By Mr. Volk) Your testimony is as a cartographer
3 and not as a navigator.

4 A Right, I don't navigate a ship, so I --

5 Q All right. Now, getting back to this chart, which
6 has been shown to you before and previously marked as Moran
7 Exhibit 17, on January 23, 1975, I call your attention to the
8 point marked 'A'.

9 How would you describe that point, if you were asked
10 to describe it, as a cartographer? This here (indicating).

11 A I would describe it as a critical depth here, this --

12 Q As a what?

13 A A critical depth. When I say critical, I'm referring
14 that it should be charted because the surrounding depths would
15 be four or five feet deeper.

16 Q Does it come up gradually, or is it sort of a pinnacle?

17 MR. SCHULMEISTERS: I would object to the form. It's --

18 MR. VOLK: Well, let him describe it. Is it a smooth
19 bottom or is it a point?

20 THE WITNESS: It's a point there. It goes from 24,
21 to 20, and back to 25. So it's --

1 Q (By Mr. Volk) It comes up to a point.

2 A Yes.

3 Q Is a pinnacle a fair way to describe it?

4 A Yes.

5 Q Now, if you knew that that pinnacle were of rock,
6 would you as a chartographer put that on your chart, and indicate
7 it as rock?

8 A If I knew specifically that was a rock, right, I
9 would put it as 20 RK.

10 Q As a warning to mariners, right?

11 A Yes.

12 Q Fathometer charts, or diagrams, do you know what I
13 mean by that?

14 A Yes.

15 Q All right. Have you ever looked at one?

16 A Yes.

17 Q I show you a fathom reading. Do you recognize it as
18 being a fathometer reading?

19 A Yes.

20 Q And this has been previously marked as Moran Exhibit
21 16, dated January 23, 1975.

1 established. Are these the same as the Corps of Engineers uses?

2 A No.

3 Q Mr. Volk has been asking you about a 19 or 20 foot
4 sounding here on Moran Exhibit 17. Do you have any sounding here
5 in that area on Chart 284, and I'm referring now to Exhibit 1,
6 which would have been in effect in October or '73. Is there a
7 sounding on that chart that corresponds to this general area?

8 A Yes.

9 Q What does that sounding there show?

10 A That it's 19.

11 Q 19 feet, right?

12 A Right.

13 Q Now, you mentioned the Coast Pilot as a source from
14 which you get information, and I hand you a volume. Is that
15 what you were referring to?

16 A Yes.

17 MR. VOLK: I was talking about the nature of the
18 bottom.

19 MR. SCHULMEISTERS: Yes, with respect to the bottom.

20 MR. VOLK: Right, the nature of the bottom.

21 MR. SCHULMEISTERS: Let's mark this Coast Pilot, the

1 United States Coast Pilot, Numeral 2, 8th Edition, 1973, and
2 I'd like to have that marked as Radden Exhibit A for identifi-
3 cation.

4 (Whereupon, the Coast Pilot referred to was marked
5 Radden Exhibit A for identification.)

6 Q (By Mr. Schulmeisters) Is this a Government publi-
7 cation?

8 A Yes.

9 Q Now, Mr. Volk also asked you about the scale of the
10 charts, and asked you if the chart were made on a scale of 1 to
11 10,000 as opposed to 1 to 40,000.

12 How many charts would you need to cover the Hudson
13 River using the scale of 1 to 10,000?

14 MR. VOLK: He's referring to what exhibit now?

15 MR. SCHULMEISTERS: Exhibit 2.

16 THE WITNESS: It would be more adequate for the --

17 MR. SCHULMEISTERS: No.

18 THE WITNESS: Read the question again?

19 MR. SCHULMEISTERS: Read back my question.

20 (Whereupon, the question referred to was read back
21 by the Reporter.)

THE WITNESS: 24 charts.

Q (By Mr. Schulmeisters) And how many charts are there now for the Hudson River, using the 1 to 40,000 scale?

A 3.

Q In other words, you would have to use 24 instead of 3 charts.

A At the 1 to 10,000 scale, yes.

MR. SCHULMEISTERS: All right, I have no further questions.

MR. VOLK: That's it.

(Examination concluded.)

* * * * *

Excerpts From Deposition of Robert Lord Maynard
(U.S. Exhibit E)

* * *

ROBERT LORD MAYNARD, having
been first duly sworn by the Notary Public, was
examined and testified as follows:

EXAMINATION BY MR. SCHULMEISTERS:

Q What is your name?

A Robert Lord Maynard, M-a-y-n-a-r-d.

Q Where do you live?

A 55 Church Street, Noank, Connecticut.

Q By whom are you employed, Captain?

A Moran Towing & Transportation Company.

Q In what capacity?

A Master.

Q Master of what?

A Of any of their tugs.

Q How long have you been employed by Moran?

A Seven to eight years, approximately.

Q Are you familiar with the litigation we are
dealing with, the occurrence?

A More or less, yes.

Q That is, the October 18, 1973 incident?

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1
2 A Yes.

3 Q On what tug were you then working?

4 A The JUDY MORAN.

5 Q Were you the master of that tug at that time?

6 A I was.

7 Q How long is the JUDY MORAN?

8 A Offhand, I think 105 feet, approximately.

9 Q How wide is she?

10 A 38 feet, I believe.

11 Q What is her depth?

12 A At that particular time, I believe she was drawing
13 about 15-6.

14 Q That is, 15 feet, six inches?

15 A Yes.

16 Q And how is she propelled?

17 A Twin screw.

18 Q What kind of an engine?

19 A Diesels.

20 Q Two diesel engines?

21 A Yes.

22 Q What is the pitch of the propeller?

23 A I would have to check that again. I have been
24 on so many tugs and the pitches are different.

25 Q How do you control the engines?

1
2 BY MR. SCHULMEISTERS:

3 Q Did you have any license, Captain?

4 A Yes.

5 Q What kind of license?

6 A A master of oceans, unlimited, with various first
7 class pilotage. I don't hold pilotage for the Hudson
8 River, but my license covered the river at the time
9 because of the tonnage of the vessel.

10 Q You got me confused there for a minute.
11 You have a master's license, first class, unlimited
12 for oceans?

13 A I have an unlimited master of oceans license and
14 a first class pilot license for certain waters.

15 Q Right.

16 A Not including the Hudson River.

17 Q You are not licensed as a pilot for the
18 Hudson River?

19 A No, I am not.

20 Q Can a pilot's license for the Hudson River
21 be obtained; do you know?

22 A Oh, yes. But it is also not required for vessels
23 of this tonnage.

24 Q Do you have pilotage for other areas in
25 the New York Harbor?

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A We use the VHF.

Q And on what band?

A 13. That is Channel 13.

Q Do you have any charts on board the Tug
JUDY MORAN?

A Oh, yes.

Q Did you have on board the charts for the
Hudson River on October 17th and 18th?

A Yes.

MR. SCHULMEISTERS: Do you have them, Mr.
Volk?

MR. VOLK: The chart, I believe, is 284, and
has been requested from the tug and that would be
produced, the one that was on the tug at the
time.

Q Did you make any marks on that chart, the
284, the one on board the tug?

A Prior to or relative to this or --

Q Let me ask you this. The one that you
had on board on October 17-18, 1973, did you ever
make any marks on it right after the accident?

A Oh, yes, yes. There was a mark drawn on it. I
laid out what I call -- what I felt was the approximate
location.

Q Did you discuss that mark with anybody afterwards?

A Yes, the Coast Guard in Albany.

Q Did you show the chart to anybody?

A Yes.

Q The Coast Guard in Albany?

A Also, I believe, to a representative of Mr. Bouchard, and his representative in Albany.

Q Mr. Tesoriero?

A No, he wasn't the one.

MR. VOLK: Betz?

THE WITNESS: Yes, Mr. Betz.

Q Did anybody make a copy of that chart?

A Not to my knowledge.

Q And that is the one that is numbered 284?

A Yes.

Q Have you worked on the 284 with anybody else, other than on that particular chart, prior to your testifying here?

A Yes.

Q Where is that chart?

A Oh, I worked on it with other pilots in the river, to lay the courses out, and on various tugs and vessels I have been on. I talked to them to find out for my

1
2 information, how, when and where it was caused, and
3 I have worked on several of them.

4 Q Did you work on any of them with anybody
5 in the office?

6 A No.

7 Q The company's office?

8 A No.

9 Q You worked on it with other Moran pilots?

10 A Yes.

11 Q Which other Moran pilots?

12 A Joe McDonald, Bob Ware.

13 Q Ware?

14 A W-a-r-e.

15 Q Yes.

16 A George Mason, several other ones, and I can't
17 remember offhand, but I would discuss it with them
18 because these men are familiar with the river and
19 we are trying to determine how and what and where it
20 happened.

21 Q Were those charts the charts on those boats
22 these men were on?

23 A Whatever boat they were on at the time. I
24 really can't remember.

25 Q Do you know what boat Joe McDonald is on now?

1
2 that I am showing this to Mr. Volk.

3 MR. VOLK: Okay. Do you want to mark it?

4 MR. SCHULMEISTERS: Yes, let's mark that as
5 Government (Maynard) Exhibit C for identification.

6 (Chart 284, corrected through notice to
7 mariners to October 18, 1973, marked Government
8 (Maynard) Exhibit C for identification, as of
9 this date.)

10 BY MR. SCHULMEISTERS:

11 Q I presume you recognize this chart; is that
12 right?

13 A Yes, I do.

14 Q You were going northbound; is that right?

15 A That is correct.

16 Q What course were you steering when you were
17 near Light 27?

18 A I would say the approximate course, because in
19 this channel here, this buoy is much further in. The
20 approximate course was 18.

21 Q 18 degrees?

22 A That is correct.

23 Q Is that true or magnetic?

24 A That is true.

25 Q Did the JUDY MORAN have a gyrocompass?

1
2 A Yes, she did.

3 Q Did she have a gyro error?

4 A To my knowledge, at that particular moment, no,
5 but I will say the vessel itself had one of those
6 gyros that sometimes too gave us belief it was and
7 sometimes -- well, after I make a swing and she steadies
8 down, I don't believe she has an error, no. But I
9 must point out, in the river, with all the aids to
10 navigation visible, steering courses can be -- you
11 can only steer within 1, 2 or 3 degrees at a time. The
12 ship will move back and forth and if you find yourself --
13 and if I find myself what I consider on the wrong side
14 of my fairway, or out of position in the fairway, I
15 do try to correct it, so I will not steer a 118 or an
16 18 course up here (indicating). I will steer 120, until
17 I get shaped up to what I consider right.

18 Q You mean 20, not 120?

19 A Yes, that's right. I don't know why 100 got in
20 the way.

21 Q What was the visibility on October 18th?

22 A It was unlimited.

23 Q Let's confine ourselves for the next few
24 questions to the area south of Houghtaling Island,
25 approximately around or between 11:30 p.m. on the 17th

1
2 I believe it is a half mile to 48 miles.

3 Q The smallest one would be a half a mile
4 range; right?

5 A Yes.

6 Q Does it have a mile range?

7 A Yes.

8 Q Would it have two miles?

9 A Yes.

10 Q And a three-mile?

11 A No, wait. I think it is half mile, a mile and a
12 half, three miles, six miles.

13 Q What range selector were you using at that
14 time?

15 A To be honest with you, I was steering the vessel
16 and I had a mate who was not acquainted with the river
17 and he was using the radar while I was steering
18 visually.

19 Q Was that Ferguson?

20 A Yes.

21 Q You did not use the radar?

22 A No, I did not use the radar.

23 Q Did the mate give you any reports prior
24 to the stranding?

25 A No.

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Q I see.

A And that was without measuring anything. Yes.
I will show you approximately --

Q Please answer my question, sir.

A Yes.

Q And what do you say in the report, where
you hit?

A I said approximately 300 feet south of Houghtaling
Island Dike Light 36.

Q On Exhibit A, your logbook, do you also
give the place where you hit?

A Yes.

Q Was that also 300 feet?

A Yes, I said approximately.

Q I will give you a pair of dividers and a
black pen. Will you please mark the spot on the chart?

A Yes. Well, I will have to admit I was in error.
There was an error in judgment on a dark night.
Here (indicating).

Q Would you mark that spot, please, with a
black pen?

A Yes (witness complies).

Q I will draw a line from this dot. You
have marked this in the center of the channel; is that

1
2 A Yes.

3 Q And you have drawn a circle around the buoy
4 and the channel?

5 A That's correct.

6 Q I will mark that with the position "C"
7 (indicating), and a line from it.

8 A Yes.

9 Q How did you pass?

10 A Port to port.

11 Q Approximately how far was the port side of
12 the barge, BOUCHARD 95, from the MORANIA 300?

13 A I would estimate about 100 feet.

14 Q That is from the port side of the MORANIA?

15 A Yes.

16 Q 100 feet in between the two vessels?

17 A Yes.

18 Q What course were you on at the time you
19 passed at Buoy 35, marked "C" on the exhibit?

20 A I was steering approximately a course of 5 here.

21 Q Yes.

22 A Or what I tried to steer was a course of 5.

23 If I am not coming here, I will adjust it, but the
24 course is 5, and what I use from this particular buoy
25 here, I change a course and steer for this dike light.

1
2 Q From this particular buoy -- and let's
3 label that. That is No. 30; is that correct?

4 A Yes.

5 Q And that was not lighted?

6 A Yes.

7 Q And then you steer for the dike light?

8 A Yes. Until I am abeam of this buoy.

9 Q The dike light is Light 30; is that correct?

10 A That's correct.

11 Q And until you are abeam of this buoy -- you
12 mean Buoy 35?

13 A Yes, that is correct.

14 Q So the change to a course of approximately
15 5 degrees was approximately in the area of Buoy 30;
16 is that correct?

17 A Yes.

18 Q And prior to that you were steering
19 approximately 18?

20 A That's correct.

21 Q Once you are abeam of Buoy 35, what course
22 did you then steer?

23 A -- I steer right up for Houghtaling Island light
24 here, which would be a course of about 355 or 354,
25 somewhere in that neighborhood.

1
2 Q That is the Houghtaling Island light?

3 A Yes, from here (indicating).

4 Q From there you steer --

5 A From there, up in between these two, between
6 these buoys, I steer a course of approximately 354,
7 355.

8 Q Heading for the Houghtaling light?

9 A Yes.

10 Q Which is Light No. 40; is that correct?

11 A Yes. And that should leave Stuyvesant light here
12 under my stern.

13 Q Stuyvesant light is Light No. 32?

14 A Yes, that is correct.

15 Q So from abeam of --

16 A You start your swing on Buoy 30.

17 Q Yes, and from abeam of 35, you steer for
18 Light 40?

19 A Yes.

20 Q With Light 32 then astern of you?

21 A That is correct. If you do that, that is what
22 we steered coming up here until this course would take
23 me fairly close here (indicating).

24 Q You have drawn a pencil line --

25 A Wait until I get my glasses on so we get this

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thing exact.

Q Good.

A My eyes aren't so good any more.

This would take me right here (indicating).

Q Do you want to draw the whole course line?

A Yes.

Q It would be easier to see.

A Yes (indicating).

Q You have drawn now the course in pencil.

A Yes.

Q You have the first course over here. What was that?

A That was the 18 (indicating).

Q Let me draw a pencil from that one and label that, course 018.

A Yes, course 018.

Q And the next course was?

A 005.

Q And I will draw a line and that is course 005.

A Yes.

Q And we will put the degree sign next to that.

A Yes.

Q And the third one was what?

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2 A 355, I believe it was.

3 Q Do you want to check that?

4 A Yes (indicating). It was 354 there. I was
5 steering 355. My course is at 355.

6 Whether I am doing this right or wrong or
7 not, I always do it 355.

8 Q Suppose we label that 355.

9 A Yes.

10 Q These are true courses; is that right?

11 A Yes, and that takes you onto the range which is
12 349-1/2.

13 Q That is the New Baltimore range?

14 A Yes.

15 You must understand, as I pointed out, this
16 particular buoy sits 100 yards off the channel.

17 Q That is Buoy 54?

18 A Which I don't use. This particular buoy sit
19 50 feet inside the channel.

20 Q Which is Buoy 38?

21 A Yes. It sits 50 feet inside, so I try not to use
22 that one.

23 Q Yes.

24 A What I try to do is come up here, and we always
25 bear conscious thought, that I found out to be erroneous

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BY MR. SCHULMEISTERS:

Q According to the Coast & Geodetic Survey,
as you know it, you were always within the channel
markers?

A Yes, to the best of my knowledge and ability. If
I was out of it, I would say so, but to the best of
my knowledge and ability, I was in the channel and
safely within the channel.

Q By "safely," you mean approximately how
many feet?

A 50, 100, 200 -- anywhere from 75 to 100 feet.

Q 75 to 100 feet inside the channel?

A Yes.

Q From the easterly edge of the channel?

A Yes.

Q On the Coast & Geodetic Survey chart,
Exhibit C?

A Yes, that is correct.

Q Mr. Volk has produced the Army Engineers'
chart, Exhibit H. Is this the one you were referring to,
the survey that you participated in?

A Yes, but I didn't see the chart when they made it.
I saw one similar to that that they had before. As
far as the soundings, I don't know.

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Q What did you do then with Moran?

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A I went chief officer -- I went on the deep sea tug towing cement barges until I learned the big barges, to learn how to handle the big barges. They offered me many times to go captain, but until I learned it, I didn't want to until I felt I was qualified. And I have been captain ever since.

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Q And you say you have been a tug master with Moran for ten years?

A Yes.

Q Where have you been running?

A All over, except to canal and the lakes.

Q How often do you go up the Hudson River?

A How often have I been up the Hudson River altogether?

Q Say, within the ten years.

A With Moran, I would say 70 or 80 times.

Q As tug captain?

A Yes.

Q And has that always been on a similar type of arrangement where you are pushing the barges?

A No, I have towed the big barges up there. I have towed them on a hawser and taken them alongside. I have pushed them.

1

2 A Yes.

3 Q Do you use that for navigating from that
4 area up?

5 A From Buoy 30, no. I don't use that. I use the
6 green buoy and this dike light (indicating). From
7 Buoy 30 up, I use it -- from Buoy 35 up, I use it.

8 Q You say that on your license you have
9 various pilotages; is that right?

10 A Yes.

11 Q Did you take examinations to get those
12 pilotage endorsements?

13 A Yes.

14 Q What kind of examination did you have to
15 take for those endorsements?

16 A Knowing all aids and dangers to navigation,
17 aids for and dangers to navigation, courses, distances,
18 lights.

19 Q Did you have to label a chart in the area
20 with the various buoys on it?

21 A Yes.

22 Q And show the obstructions?

23 A Yes.

24 Q You never did that for the Hudson River,
25 did you?

1

2 A No. I have done it for New York Harbor.

3 Q But only up how far?

4 A To the Battery.

5 Q Did you at any time make any written reports
6 or statements in connection with any insurance claims?

7 A In what sort of a matter?

8 Q In connection with this particular stranding.

9 A The only reports I have submitted is what I have
10 given him (indicating).

11 MR. SCHULMEISTERS: May I see them, Mr. Volk?

12 MR. VOLK: Even if there were any, I
13 wouldn't give them to you. He never gave me
14 anything in writing.

15 THE WITNESS: No, I never gave him anything
16 in writing, no.

17 Q How about anything for the underwriters,
18 for Mr. Mesick?

19 A I filed a Moran damage report.

20 Q May I see that, please?

21 A I don't have it.

22 MR. SCHULMEISTERS: Will you produce it,
23 Mr. Volk?

24 MR. VOLK: If there is such a report, I
25 will produce it.

Service of three (3) copies of the within *Appendix*
is admitted this 7th day of *July* 1977

